

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, via first class mail, postage prepaid, this 17th day of April, 2017, to attorney for Defendant, Jeffrey Sanchez, Peters & Sanchez, L.L.P., 1234 Main Street, Suite 157, Los Angeles, CA 90017.

/s/ Kate Bauer /s/

Applicant Details

First Name	Alexandria		
Last Name	Bell		
Citizenship Status	U. S. Citizen		
Email Address	abell32@fordham.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 481 Greene Ave, Apt BSMT City Brooklyn State/Territory New York Zip 11216 Country United States </td> </tr> </table>	Address	Street 481 Greene Ave, Apt BSMT City Brooklyn State/Territory New York Zip 11216 Country United States
Address			
Street 481 Greene Ave, Apt BSMT City Brooklyn State/Territory New York Zip 11216 Country United States			
Contact Phone Number	9734941087		

Applicant Education

BA/BS From	New York University
Date of BA/BS	May 2017
JD/LLB From	Fordham University School of Law https://www.fordham.edu/info/29081/center_for_judicial_engagement_and_clerkships
Date of JD/LLB	May 1, 2022
Class Rank	Below 50%
Law Review/Journal	Yes
Journal(s)	Fordham Urban Law Journal
Moot Court Experience	Yes
Moot Court Name(s)	Brendan Moore Trial Advocacy Team

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Recommenders

Cozier, Honorable Barry Cozier (Ret.)
barrycozier@yahoo.com
(914) 883-6449
Wagstaff, Brandy
brandy.wagstaff@usdoj.gov
(301) 785-7562

References

Name: Honorable Barry Cozier (Ret.)
Title: Adjunct Professor
Organization: Fordham University School of Law
Phone Number: (914) 883-6449
Email Address: barrycozier@yahoo.com
Relationship: Professor of Juvenile Justice Survey course

Name: Brandy Wagstaff
Title: Legal Counsel for Litigation
Organization: Department of Justice, Civil Rights Division, Criminal
Section, Human Trafficking Prosecution Unit
Phone Number: (202) 598-5238
Email Address: brandy.wagstaff@usdoj.gov
Relationship: Supervising Attorney at the Human Trafficking
Prosecution Unit

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

Alexandria Bell
481 Greene Ave, Apt BSMT
Brooklyn, New York 11216

June 7, 2021

Honorable Elizabeth W. Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, Virginia 23219

Dear Judge Hanes,

I am a rising third-year law student at Fordham University School of Law where I serve as a staff member on the Urban Law Journal, a team member of the Brendan Moore Trial Advocacy Team, the President of Mentoring Youth Through Legal Education, and the Community Service Chair as well as the Diversity and Inclusion Liaison to the Jewish Law Students Association. I am respectfully applying for a clerkship with Your Honor for the 2022-2024 term or any term thereafter.

My current studies at Fordham have been strengthened by my formative experiences as a Summer and Fall 2020 intern at the U.S. Attorney's Office for the District of New Jersey and as a Spring 2021 intern with the Human Trafficking Prosecution Unit in the Civil Rights Division's Criminal Section at the Department of Justice. Both internships provided me with an insider's view on how federal prosecutors consider the law, policy, and other factors in upholding the rule of law and seeking justice. I also grew exponentially as a researcher and writer during these internships. In my role with the Human Trafficking Prosecution Unit, I was responsible for researching and writing multiple legal memoranda, each one answering a complex question of law in the human trafficking context. For example, I was tasked with researching whether, and in what context, a defendant would be successful in bringing an *In Loco Parentis* defense if his or her behavior went beyond disciplining a child and into criminal activity like forced labor or involuntary servitude. The exercise of researching the case law, conducting a critical legal analysis, and drafting the memorandum impressed upon me the importance of a lawyer's strong research, writing, and analytical skills.

I have attached my resume, unofficial law school transcript, and a writing sample. In addition, please consider my letters of recommendation from Adjunct Professor the Honorable Barry Cozier (Ret.), barrycozier@yahoo.com, (914) 883-6449 and Brandy Wagstaff, Attorney Advisor and Legal Counsel at the Human Trafficking Prosecution Unit, brandy.wagstaff@usdoj.gov, (202) 598-5238.

Thank you for your kind consideration.

Respectfully yours,



Alexandria Bell

ALEXANDRIA A. BELL

481 Greene Ave, Apt. BSMT, Brooklyn, NY 11216 ♦ (973) 494 1087 ♦ Abell32@fordham.edu

EDUCATION

Fordham University School of Law New York, NY
J.D. Candidate May 2022

Honors: *Urban Law Journal*; Brendan Moore Trial Advocacy Team; Dechert Endowed Scholarship Fund

Leadership: Mentoring Youth Through Legal Education (MYLE), *President*;
Jewish Law Students Association, Executive Board, *Community Service Chair & Diversity and Inclusion Liaison*

New York University, Gallatin School of Individualized Study New York, NY
B.A., Politics, Creative Writing, Media Studies | Minor: Studio Art May 2017

Honors: University Honors Scholar-Founder's Day Award – awarded to top-ranking graduates

Leadership: Gallatin School of Individualized Study's Dean's Team for Recruitment; NYU Chabad Board

Study Abroad: New York University in Florence, Italy, Fall 2015

PROFESSIONAL EXPERIENCE

Queens District Attorney's Office Queens, New York
Law Student Intern for the Brave Justice Summer Program, Domestic Violence Bureau Summer 2021

U.S. Department of Justice, Human Trafficking Prosecution Unit Washington, D.C.
Law Student Extern for the Civil Rights Division within the Criminal Section Spring 2021

- Conducted legal research, writing, and analysis on various issues related to human trafficking prosecutions
- Wrote legal memoranda on topics such as forced labor of children and the *In Loco Parentis* defense, the affirmative defense of the Religious Freedom Restoration Act, and the viability of potential charge under 18 U.S.C. § 2260A against an incarcerated sex offender

U.S. Attorney's Office, District of New Jersey Newark, NJ
Law Student Extern for the Organized Crime/Gang Unit Fall 2020

- Conducted legal research and analysis on various racketeering topics and on a legal question under the Federal Rules of Criminal Procedure 11(d)(2)(B) and what constitutes “fair and just reasons” under that rule

Law Student Intern Summer 2020

- Conducted legal research and analysis for Assistant U.S. Attorneys in the various criminal and civil divisions
- Drafted memoranda on legal topics including Fourth Amendment search and seizures based on reasonable suspicion, successor corporate liability under the False Claims Act, and extortion
- Prepared plea memoranda for plea hearings and observed plea hearings, initial appearances, and arraignments

Proskauer Rose LLP New York, NY
Real Estate Paralegal June 2017–June 2019

- Drafted and revised closing documents for approximately a dozen large-scale commercial real estate transactions
- Handled a variety of pro bono casework, including litigation on human rights, asylum admittance, and T visas
- Worked with non-profit organization to assist victims of human trafficking by assessing eligibility for continued presence or special visas while trafficking case was investigated and prosecuted
- Award: Safe Haven Award for Excellence in Pro Bono Representation – given by Immigration Equality

The Hon. Martin Shulman, New York State Supreme Court New York, NY
Judicial Intern Summer 2015 & Summer 2016

- Reviewed case files and prepared case summaries for medical malpractice, mass tort, and other civil actions

VOLUNTEER EXPERIENCE

AMIT Foster Home for Disadvantaged Youth, Volunteer, August 2013–June 2014

- Resided in the foster center as a “Big sister” to 12 Israeli children; taught English and Photography

National Jewish Counsel for Disabilities (Yachad), Special Needs Vocational Coach and Counselor, June 2010–Aug 2015

- Educated participants with mental and physical disabilities in organizational, hygiene, and work demeanor skills

Interests: pottery wheel (throwing), ukulele, film photography, and baking

Alexandria Bell
 Fordham University School of Law
 Cumulative GPA: 3.324

Fall 2019

Course Name	Instructor	Grade	Credit Units	Comments
Contracts	Aditi Bagchi	B	5.00	
Criminal Law	John Pfaff	B	3.00	
Legal Writing and Research	Chelsea Beser	A-	3.00	
Legal Process and Quantitative Methods	Multiple Instructors	P	0.00	P/F Course for 1L Orientation
Torts	Michael M. Martin	B	4.00	

Semester GPA: 3.13

Spring 2020

Course Name	Instructor	Grade	Credit Units	Comments
Civil Procedure	Joseph Landau	P	0.00	P/F due to COVID-19.
Constitutional Law	Corey Brettschneider	P	0.00	P/F due to COVID-19.
Legislation and Regulation	Jed Shugerman	P	0.00	P/F due to COVID-19.
Legal Writing and Research	Chelsea Beser	P	0.00	P/F due to COVID-19.
Property	James Kainen	P	0.00	P/F due to COVID-19.

Semester GPA: 0.00

Fall 2020

Course Name	Instructor	Grade	Credit Units	Comments
Externship: Civil Government Fieldwork	Fieldwork	P	2.00	Externship Placement: U.S. Attorney's Office, District of N.J., Organized Crime/Gang Unit
Fundamental Lawyering Skills	Stacy Charland	A-	3.00	
Externship Seminar	Thomas Tillona	B+	1.00	
Juvenile Justice Seminar	Barry Cozier	A-	2.00	
Depositions: Taking and Defending	James Cohen	A	2.00	
How Judges Decide	Joel Cohen	B+	2.00	

Semester GPA: 3.633

Spring 2021

Course Name	Instructor	Grade	Credit Units	Comments
Externship Seminar: Criminal Justice Fieldwork	Fieldwork	P	2.00	<u>Externship Placement:</u> Department of Justice, Civil Rights Division, Criminal Section, Human Trafficking Prosecution Unit
Externship Seminar	Moe Fodeman	B+	1.00	
Criminal Litigation Drafting	Mark Costello	A-	2.00	
Criminal Procedure: Investigative	Bennett Capers	B	3.00	
Firearms Law	Nicholas Johnson	A-	3.00	
State and Local Government	Nestor Davidson	B	3.00	

Semester GPA: 3.306

FORDHAM UNIVERSITY SCHOOL OF LAW

EXPLANATION OF TRANSCRIPT

Grade Scale for the Juris Doctor (J.D.)

<u>Effective Fall 2014</u>		<u>Prior to Fall 2014</u>	
Grade	Quality Points	Grade	Quality Points
A+	4.333	A+	4.30
A	4.000	A	4.00
A-	3.667	A-	3.70
B+	3.333	B+	3.30
B	3.000	B	3.00
B-	2.667	B-	2.70
C+	2.333	C+	2.30
C	2.000	C	2.00
C-	1.667	C-	1.70
D	1.000	D	1.00
F	0.000	F	0.00
P	Not in GPA	P	Not in GPA
S	Not in GPA	S	Not in GPA

Class Ranking - The Law School does not calculate class rankings.

Transfer Credit - Transfer credit (ex. TA, TB, etc.) represents work applicable to the current curriculum and must be a minimum of a **C-** grade to be accepted. Transfer credit is not included in the weighted grade point average.

Repeating Courses - Only a course with a failed grade may be repeated. Failed required courses must be repeated. Failed elective courses may be repeated, however this is not required. If repeated, the quality points of the new grade will be half in value (ex. F/A would be 2.00 quality points). The original failing grade remains on the transcript.

Grade Scale for Master of Laws (LL.M.) and Master of Studies in Law (M.S.L.)

<u>Effective Fall 2017</u>		<u>Prior to Fall 2017</u>	
Grade	Quality Points	Grade	Description
H+	4.2	H (Honors)	Outstanding performance
H	4.0	VG (Very Good)	Excellent performance
H-	3.8	G (Good)	Above average performance
VG+	3.6	P (Pass)	Performance worthy of credit
VG	3.4	F (Fail)	Inferior performance that does not satisfy the minimum standard for course credit
VG-	3.2		
G+	3.0		
G	2.8		
G-	2.6		
P+	2.4		
P	2.2		
P-	2.0		
F	0.0		

Effective Fall 2014 within each grade level (H, VG, G, P), students may be awarded a plus (+) or minus (-) to distinguish performance on the high end or the low end within the grade level.

Grade Scale for Legal Writing and Introduction to U.S. Legal System Courses (These grades are not factored into honors determinations)

Students Admitted Prior to Fall 2017

Grade	Description
HP (High Pass)	Outstanding
PA (Pass)	Good or Acceptable
LP (Low Pass)	Passing, but deficient performance
FA (Fail)	Performance unworthy of credit

Students Admitted Prior to Fall 2011

Grade	Description
H (Honors)	Outstanding
CR (Credit)	Good or Acceptable
F (Fail)	Performance unworthy of credit

Grade Scale for Doctor of Juridical Science (S.J.D.)

Grade	Description
CR	Credit
NR	No Credit

Administrative Grades that May be Used in J.D., LL.M., and M.S.L Programs

AUD (Auditing)	NC (No Credit)
CR (Credit)	NGR (No Grade Received)
INC (Incomplete)	S (Satisfactory)
IP (In Progress; year long course, final grade assigned in succeeding term)	U (Unsatisfactory)
	W (Withdrew)

Student education records on reserve are maintained in accordance with Public Law 93-380, sec 438, •The Family Education Rights & Privacy Act• (FERPA). The policy of Fordham University pertinent to this legislation is available from the Registrar upon request.

Fordham Law School
150 W. 62nd Street
New York, NY 10023

June 10, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I enthusiastically write this letter to recommend Alexandria Bell, a 2L at Fordham University School of Law, for a clerkship with your chambers. I am an Adjunct Professor at Fordham Law and had the privilege of having Ms. Bell as a student in my seminar course "Juvenile Justice Survey" during the Fall 2020 semester. While I have been a practicing attorney since 2006, as a retired Justice of the New York Supreme Court and Associate Justice of its Appellate Division, I am delighted that Ms. Bell is applying for a judicial clerkship.

My seminar course was limited to sixteen (16) students and I had the opportunity to interact with Ms. Bell both during class and office hours, and to observe her attentiveness, consistent constructive participation in class discussions, her interest in the subject matter, and her diligence in mastering the assigned case and statutory law. Ms. Bell was an active and engaged member of the class, who willingly voiced her opinions, shared her perspectives, and posed relevant questions about course materials. Her final course paper, "Extradition of Juveniles: Standards Under the Interstate Compact for Juveniles" was comprehensive and well-researched. Ms. Bell distinguished herself by earning a grade of A- for the course.

In my opinion, Ms. Bell has demonstrated a commitment to public service and professional growth in her impressive previous internships in the Queens District Attorney's Office, the U.S. Department of Justice, Human Trafficking Prosecution Unit, and the U.S. Attorney Office, District of New Jersey. She has gained valuable experience in legal research, analysis, and writing, as well as familiarity with the litigation process. On a personal note, Ms. Bell has a pleasant personality, calm demeanor, keen intellect, and is focused and collaborative.

I am confident that Ms. Bell is well prepared to excel in a judicial clerkship and I wholeheartedly recommend her.

Respectfully yours,

Barry A. Cozier

Honorable Barry Cozier (Ret.) Cozier - barrycozier@yahoo.com - (914) 883-6449

June 09, 2021

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

It is my pleasure to recommend my former intern, Alexandria Bell, for a clerkship with Your Honor. I serve as intern coordinator for the Human Trafficking Prosecution Unit (HTPU) at the U.S. Department of Justice, Civil Rights Division. HTPU was formed within the Criminal Section of the Civil Rights Division in 2007 to consolidate the human trafficking prosecution expertise the Criminal Section had developed over decades of enforcing the pre-Trafficking Victims Protection Act (TVPA) involuntary servitude and slavery statutes. HTPU partners with United States Attorney's Offices nationwide to prosecute human trafficking cases involving forced labor, transnational sex trafficking, and sex trafficking of adults by force, fraud, or coercion, specializing in novel, complex, multijurisdictional, and international cases.

I had the great pleasure of supervising Ms. Bell during her 2021 spring internship with HTPU. Ms. Bell performed outstandingly in her role as an HTPU legal intern, and I give her my highest recommendation. Having had the great honor of serving as a federal law clerk, I am confident that Ms. Bell would make an excellent law clerk and contribute significantly to your chambers.

During her time in HTPU, Ms. Bell analyzed unresolved and complicated issues of law, researching and drafting both detailed memoranda and brief answers and developing some subject matter expertise. Ms. Bell was always eager to accept any new project, was always flexible, and regularly sought feedback on her work. She always worked diligently, even working beyond typical work hours, if necessary, to complete a project by the deadline. Her work product was excellent, her writing was clear and well-organized, and her productivity outstanding.

One significant example was the comprehensive project she was assigned to research the defense of in loco parentis to a forced labor or involuntary servitude claim. She thoroughly reviewed all relevant case law to identify whether this might be a successful defense. She took her results and drafted a well-written legal memorandum analyzing the issues and highlighting the case law most helpful to government, while also noting cases that were distinguishable. Her final work product was incorporated into a legal memorandum analyzing a variety of legal issues for a case we are investigating and planning to indict.

Another research project allowed Ms. Bell's analytical skills to really shine. She drafted a memorandum analyzing a potential charge against a convicted sex offender under 18 U.S.C. 2260A. This was a very complicated issue that was confusing even to myself and the prosecuting attorney. Thanks to Ms. Bell's hard work digging into the case law, analyzing all the angles, discussing the issues in depth with both me and the prosecuting attorney, we were able to make a final decision on whether to bring a charge under § 2260A against this particular convicted sex offender. I especially appreciated Ms. Bell's diligence in working to get the complicated analysis correct. She demonstrated excellent analytical skills, showcased her outstanding ability to incorporate feedback, and made clear that she does not shy away from even the most complex legal questions.

Throughout these and other projects, Ms. Bell demonstrated intelligence and keen analytical and writing skills. Ms. Bell impressed me how hard working and productive she was, and her attention to detail was outstanding. She had a number of projects she was juggling at once, and did an excellent job managing the different projects so that she was making good progress and staying on top of deadlines. Ms. Bell always conducted herself in a professional manner, and proved to be dependable, reliable, and efficient. She worked well independently, but also knew when to check in or make follow-up inquiries to ensure she was on the right track. Not only did Ms. Bell produce quality work product, but she also maintained the required respect and sensitivity to work through the often difficult and shocking materials that we encounter in trafficking cases.

Bottom line, Ms. Bell was an absolute pleasure to work with—always maintained a calm, positive, and friendly demeanor even under stressful circumstances. The qualities she possesses would ensure her successful tenure in your chambers.

Thank you for your consideration. If you have any questions, please do not hesitate to contact me. I would love the opportunity to discuss Ms. Bell's qualifications further.

Sincerely,

Brandy Wagstaff
Legal Counsel for Litigation

Brandy Wagstaff - brandy.wagstaff@usdoj.gov - (301) 785-7562

Human Trafficking Prosecution Unit
(202) 307-2219
Brandy.Wagstaff@usdoj.gov

Brandy Wagstaff - brandy.wagstaff@usdoj.gov - (301) 785-7562

Alexandria Bell

481 Greene Ave, Apt. BSMT, Brooklyn, NY 11216 • (973) 494-1087 • abell32@fordham.edu

Writing Sample

The attached writing sample is a memorandum from my time as a Summer 2020 intern at the U.S. Attorney's Office for the District of New Jersey and written for the Health Care Fraud Unit. The writing sample is my own work and is being submitted with the express approval of my supervisor, Tracey Agnew, and the U.S. Attorney's Office for the District of New Jersey.

The memorandum answers the question of whether a successor company can be held liable for its predecessor's false claims if the successor company maintained the same personnel, assets, business operations, and business location of the predecessor company. Based on my research, I found that a successor company will most likely be held liable for its predecessor's false claims if the successor company maintained the same personnel, assets, business operations, and business location of the predecessor company. Additionally, I found that my conclusion of finding a successor company liable for its predecessor's false claims would be further supported by obtaining additional information about the companies like the names of all management personnel over a certain number of years to the present, the identity of all business locations over a certain number of years to the present, and the identity of all shareholders of the companies prior to the agreement, and after the agreement.

Memorandum



Subject	Date
Successor Liability under the False Claims Act	July 28, 2020
To	From
AUSA	Alexandria A. Bell

Question Presented

Can a successor company be held liable for its predecessor's false claims if the successor company maintained the same personnel, assets, business operations, and business location of the predecessor company?

Short Answer

Probably yes. The general rule of successor liability is that a successor corporation is not liable for the acts of its predecessors. However, courts recognize four exceptions to this general rule: (i) when the purchaser expressly or implicitly agrees to assume the other company's debts and obligations; (ii) when the purchase is a de facto consolidation or merger; (iii) when the purchaser is a mere continuation of the seller; or (iv) when the transfer of assets is for the fraudulent purpose of escaping liability. Here, the government will likely be able to prove that Company LLC's ("Company")¹ successor, Successor Company LLC ("Successor Company"), is a "mere continuation" of Company and, therefore, can be held liable for Company's false claims because

¹ The identity of the companies in this memorandum have been anonymized for purposes of this writing sample.

Successor Company maintained the same personnel, assets, business operations, and business location of Company.

Statement of Facts

In 2017, Company, the seller, and Successor Company, the purchaser, entered into an asset purchase agreement (the “Agreement”), in which Successor Company acquired all of Company’s assets. The Agreement identifies Person 1 as the sole member and equity owner of Company. Person 1 is currently the chief executive officer of Successor Company. Successor Company maintains the same business location as Company, located at [Address]. Successor Company operates a [health care business], just like Company, and Successor Company continues to do business as “Company.” A review of screen captures of Company’s website shows that by all appearances, the company has operated continuously under the name of “Company” since 2015, both before and after the Agreement. The Agreement contains a provision stating that “[Successor Company] does not assume and shall in no event be liable for any Liabilities of [Company]” (See Agreement § 2.3.)

On [DATE], in the United States District Court for the District of New Jersey, John Doe was convicted of conspiracy to violate several healthcare statutes and sentenced to 50 months in prison. Doe ran a Medicare fraud scheme [a description of the scheme is anonymized to protect the identity of Company 1]. Following John Doe’s arrest, Company entered into the Agreement to transfer assets to Successor Company.

Discussion

The government will likely be able to prove that Successor Company is a mere continuation of Company and, therefore, can be held liable for Company's false claims because Successor Company maintained the same personnel, assets, business operations, and business location as Company. The False Claims Act ("FCA"), 31 U.S.C. § 3729, does not speak to successor corporate liability. Instead, federal courts in New Jersey have applied state common law. *See United States v. Chubb Inst.*, No. 06-3562, 2010 WL 1076228, at *15 (D.N.J. Mar. 22, 2010) (holding that successor liability under the FCA is governed by state law). The general rule of successor corporate liability in New Jersey is that when a company sells its assets the purchasing company is not liable. *Id.* (citing *Ramirez v. Amsted Indus., Inc.*, 431 A.2d 811, 815 (N.J. Sup. Ct. 1981)). Furthermore, because the Agreement contains a non-assumption of liabilities clause, Successor Company will likely only be liable for Company's violation of the FCA if one of the four exceptions to successor liability applies.²

The doctrine of successor liability has four well-established exceptions where a successor company can be held liable for the debts and liabilities of its predecessor company:

- (i) the purchaser expressly or implicitly agrees to assume the other company's debts and obligations;
- (ii) the purchase is a de facto consolidation or merger;

² Note, further research is needed on whether any Court has applied the "mere continuation" doctrine even where the contract explicitly disclaims liabilities.

- (iii) the purchaser is a mere continuation of the seller; or
- (iv) the transfer of assets is for the fraudulent purpose of escaping liability.

Glynwed, Inc. v. Plastimatic, Inc., 869 F. Supp. 265, 271 (D.N.J. 1994); *see also* *Flagship Interval Owner's Ass'n, Inc. v. Phila. Furniture Mfg. Co.*, No. 09-1173, 2010 WL 1135736, at *6 (D.N.J. Mar. 22, 2010) (same). Here, the only exception that would likely apply is the “mere continuation” exception.

When determining if a mere continuation exists, courts have considered the following factors:

- (i) continuity of management, personnel, physical location, assets, and general business operations;
- (ii) a cessation of ordinary business and dissolution of the predecessor as soon as practically and legally possible;
- (iii) assumption by the successor of the liabilities ordinarily necessary for the uninterrupted continuation of the business of the predecessor; and
- (iv) continuity of ownership/shareholders.

Id. at 276; *see generally* *Glynwed, Inc. v. Plastimatic, Inc.*, 869 F. Supp. 265, 275 (D.N.J. 1994) (holding that courts consider the same four factors to determine mere continuation and a de facto merger).³ Not all factors must be

3 Other circuits have formulated the mere continuation test slightly differently. *See, e.g., United States v. Distler*, 741 F. Supp. 637, 642–43 (W.D. Ky. 1990), *on reconsideration*, 865 F. Supp. 398 (W.D. Ky. 1991) (“Among the factors considered are whether the successor: (1) retains the same employees; (2) retains the same supervisory personnel; (3) retains the same production facilities in the same location; (4) continues producing the same products; (5) retains the same name; (6) maintains continuity of assets and general business operations; and (7) whether the successor holds itself out to the public as the continuation of the previous corporation.”).

present. *Id.* Furthermore, identity of ownership is not necessary for mere continuation to apply—the fact that, here, Company’s main shareholder became a mere employee after the transaction will not likely be dispositive. See *Bowen Eng’g v. Estate of Reeve*, 799 F. Supp. 467, 488 (D.N.J. 1992), *aff’d*, 19 F.3d 642 (3d Cir. 1994) (holding that if a successor company maintains the same personnel, continues the same operations without stopping, the ownership of the entity which maintains the same name cannot be the only controlling factor of liability); *United States v. Gen. Battery Corp.*, 423 F.3d 294, 306 (3d Cir. 2005) (Courts look for “continuity rather than identity of ownership, corresponds with the general purposes of the successor liability doctrine.”).

A. Continuity of Management, Personnel, Physical Location, Assets, and General Business Operations

Successor Company maintained the same personnel, assets, business operations and physical location as Company. *Delzotti v. Morris*, No. CIV. 14-7223 JBS/AMD, 2015 WL 5306215, at *12 (D.N.J. Sept. 10, 2015). In *Delzotti v. Morris*, the court held a successor company to be liable for its predecessor’s debts because the successor company and the predecessor company shared a common owner, therefore, there was a continuity in personnel. *Id.* In addition, the court in *Delzotti* found that due to the transfer of assets from the predecessor company to the successor company, the successor company was found to have been a de facto merger. *Id.* (holding that a successor corporation is considered liable for its predecessor’s debts when the transaction is found to be a mere consolidation or merger of the two entities). Likewise, the

government can argue that Successor Company maintained the same personnel, and therefore, should be held liable because Person 1 was the sole member and equity owner of Company and is currently the CEO of Successor Company. *Id.*

Successor Company may argue that a successor company having the same personnel as its predecessor company is not enough to establish mere continuation. *See Portfolio Fin. Servicing Co. ex rel. Jacom Computer Servs. v. Sharemax.com, Inc.*, 334 F. Supp. 2d 620, 629 (D.N.J. 2004) (holding that “[t]he mere fact that Mssrs. Jensen and Udan served as officers in both parent and subsidiary after the merger does not give rise to a reasonable inference that parent and subsidiary were de facto consolidated . . .”). But, unlike *Jacom Computer Services*, Successor Company exhibits additional factors. *Delzotti*, 2015 WL 5306215, at *12.

B. A Cessation of Ordinary Business and Dissolution of the Predecessor as soon as Practically and Legally Possible

The second factor—“a cessation of ordinary business and dissolution of the predecessor as soon as practically and legally possible”—courts looks to when determining if the mere continuation exception to corporate successor liability exists counsels in favor of finding Successor Company liable. *Glynwed*, 869 F. Supp. at 271. Although we may need more information on this issue, it appears that Company operated continuously before and after the Agreement. There was no “cessation of ordinary business,” rather, to a public observer, the Company continued to operate as before. Successor Company acquired the

assets of Company in the Agreement, continued the same business operations as a genetic testing lab, and maintained the same business location as Company at [Address]. *Id.*

C. Continuity of Ownership/Shareholders

The government will be able to argue that continuity of ownership and, or, shareholders is not dispositive to the inquiry of the mere continuation exception of corporate successor liability. The third circuit has held that not all factors considered by courts need to have occurred in order for a de facto merger or mere continuation to exist. *Luxliner P.L. Exp., Co. v. RDI/Luxliner, Inc.*, 13 F.3d 69, 73 (3d Cir. 1993).

Successor Company may argue that the traditional rule of a de facto merger or mere continuation should apply when determining if successor liability exists, which is that there must be a continuation in stockholders or owners from predecessor to successor. *Good v. Lackawanna Leather Co.*, 233 A.2d 201, 208 (N.J. Ch. 1967) (holding that continuity of ownership is a key factor in the de facto merger exception).

However, the government could argue that some courts apply and analyze the factors of the de facto merger and mere continuation exception differently. *Fizzano Bros. Concrete Prod. v. XLN, Inc.*, 42 A.3d 951, 966 (Pa. 2012) (holding that “. . . some courts . . . have taken a different approach and would not require the existence of any particular de facto merger prong, including continuity of ownership, although each prong would be considered in the analysis.”). New Jersey district courts appear to have taken the non-

traditional approach to analyzing the continuity of ownership factor. *Glynwed*, 869 F. Supp. at 277 (holding that “[c]ontinuity of ownership, not uniformity [of ownership], is the test . . . and there is no such requirement under New Jersey law.”). Therefore, although Person 1 is no longer the sole member and equity owner of the Company, as the chief executive officer of Successor Company, Successor Company can still be held liable based on the mere continuation exception. *Id.*

Conclusion

The government will likely be able to prove that Successor Company is a mere continuation of Company and, therefore, can be held liable for Company’s false claims because Successor Company maintained the same personnel, assets, business operations, and business location of Company. This conclusion would be further supported by obtaining additional information from Company, including:

- The names of all management personnel for the period 2015 to present;
- The identity of all business locations of Company and Successor Company from 2016 to present;
- The identity of all shareholders of Company prior to the Agreement; and
- The identity of all shareholders of Successor Company following the Agreement.

Applicant Details

First Name	Catherine
Middle Initial	A
Last Name	Bell
Citizenship Status	U. S. Citizen
Email Address	cabell@email.wm.edu

Address	Address Street 2729 Charleston Oaks Dr. City Raleigh State/Territory North Carolina Zip 27614 Country United States
Contact Phone Number	9192196690

Applicant Education

BA/BS From	Elon University
Date of BA/BS	May 2013
JD/LLB From	William & Mary Law School
	http://law.wm.edu
Date of JD/LLB	May 16, 2020
Class Rank	10%
Law Review/Journal	Yes
Journal(s)	William & Mary Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	Yes

Specialized Work Experience

Recommenders

Jones, Christina
cmjones02@wm.edu
(757) 221-7362

Hendrickson, Erin J.
ejhendrickson@wm.edu
757-221-7457

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Catherine Bell
505 6th Street SW Apt. 303
Roanoke, Virginia 24016
(919) 219-6690
cabell@email.wm.edu

September 15, 2020

The Honorable Elizabeth Hanes
Magistrate Judge
United States District Court for the Eastern District of Virginia
701 East Broad Street
Richmond, Virginia 23219

Dear Judge Hanes:

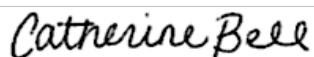
I am a recent William & Mary Law School graduate seeking a clerkship in your chambers for the 2021-2023 terms. For the 2020-2021 term, I will be clerking for Magistrate Judge Robert Ballou in the United States District Court for the Western District of Virginia.

During law school, I performed well in my legal writing courses and received the Dean's Legal Writing Award for my objective and persuasive legal memoranda. These skills were further supplemented by my experience as a Notes Editor on the *William & Mary Law Review* where I assisted student-writers and performed substantive and stylistic edits on student notes.

I gained practical experience during my 2019 fall internship with Administrative Law Judge Monica Markley at the Office of Administrative Law Judges in Newport News, Virginia. Among varied assignments, I conducted in-depth research and analysis on the Longshore and Harbor Workers' Compensation Act and was given the opportunity to present my research and offer recommendations to Judge Markley and her clerk.

Thank you for considering my application. I would appreciate an opportunity to interview and further discuss my qualifications for a judicial clerkship.

Respectfully,



Catherine Bell

Catherine A. Bell

505 6th Street SW Apt. 303 ♦ Roanoke, VA 24016 ♦ cabell@email.wm.edu ♦ (919) 219-6690

EDUCATION**William & Mary Law School**, Williamsburg, VirginiaJ.D., *magna cum laude*, May 2020

G.P.A.: 3.7, Class Rank: tied 14/182

Honors: *William & Mary Law Review*, Notes Editor*William & Mary Law Review* Best Cite-Checker Award

Dean's Legal Writing Award, First Place

CALI Excellence for the Future Award in Research and Writing I & II

CALI Excellence for the Future Award in Administrative Law

Transactional Law Team (2018 Best Draft Award, Atlanta LawMeets Competition)

Elon University, Elon, North CarolinaB.A., *summa cum laude*, Political Science, May 2013

G.P.A.: 3.98

Honors: Honors Fellow

Rudolf T. Zarzar Award for Political Theory

Honors Thesis: *The Impact of Partisan & Nonpartisan Election Systems on the NC Supreme Court***EXPERIENCE****The Honorable Robert S. Ballou****Magistrate Judge for the Western District of Virginia**, Roanoke, Virginia

September 2020 to August 2021

Law Clerk. Will serve as Judge Ballou's 2020-2021 term law clerk.**William & Mary Human Resources Department**, Williamsburg, Virginia

January 2020 to April 2020

Extern. Revised William & Mary's Out-of-State Employee, Probationary Period, and Termination policies.**The Honorable Monica Markley****U.S. Department of Labor Administrative Law Judge**, Newport News, Virginia

August 2019 to December 2019

Extern. Conducted legal research on the Longshore Harbor Worker's Compensation Act (LHWCA). Drafted one LHWCA opinion. Attended LHWCA hearings.**Ogletree Deakins**, Greenville, South Carolina

May 2019 to August 2019

Summer Associate. Conducted legal research on the Age Discrimination in Employment Act. Assisted in fact gathering and investigation. Analyzed documents and proposed questions for an upcoming deposition.**PELE Special Education Advocacy Clinic**, Williamsburg, Virginia

August 2018 to December 2018

Student Advocate. Represented parents of students with disabilities at IEP meetings. Drafted two requests for educational evaluation. Led client phone conferences and meetings. Conducted intake interview for a new client.**The Honorable John A. Gibney****U.S. District Judge for the Eastern District of Virginia**, Richmond, Virginia

May 2018 to July 2018

Intern. Conducted legal research and drafted opinions and orders. Reviewed and edited draft opinions. Summarized and evaluated the legal strength of recently filed complaints. Observed court proceedings.**Thales Academy**, Rolesville, North Carolina

July 2015 to June 2017

Trivium Instructor. Taught 120 6th-8th grade students grammar and writing skills. Created daily lesson plans and implemented the school's classical curriculum. Collaborated with parents to meet students' educational needs.**Pine Bluff High School**, Pine Bluff, Arkansas

August 2013 to May 2015

English Teacher & Teach for America Corps Member. Selected to teach for two years in an under-resourced public school as part of the Teach for America program. Taught 100 12th grade students British literature.**PUBLICATION**Endrew's *Impact on Twice-Exceptional Students*, 61 WM. & MARY L. REV. 845 (2020).

Catherine Bell
William & Mary Law School
Cumulative GPA: 3.7

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Vivian Hamilton	A	4	
Criminal Law	Cynthia Ward	B+	4	
Lawyering Skills I	Doug Ottinger	H	1	
Legal Research & Writing I	Erin Hendrickson	A	2	
Torts	Sarah Rajec	A	4	

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law	Allison Larson	A-	4	
Contracts	Peter Alces	B+	4	
Lawyering Skills II	Doug Ottinger	H	2	
Legal Research & Writing II	Erin Hendrickson	A	2	
Property	Ronald Rosenberg	A-	4	

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Business Associations	Eric Kades	B+	4	
Directed Reading	Vivian Hamilton	P	1	
Evidence	Mason Lowe	A-	3	
Government Independent Counsel	Stanley Brand	P	1	
Special Education Advocacy Clinic	Christina Jones	A-	3	
William & Mary Law Review	Nathan Oman	P	1	

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Advanced Writing & Practice: Criminal	Megan Zwisohn	B+	2	
Criminal Procedure I	Jeffrey Bellin	P	3	
Employment Law	Christopher Abel	A-	3	
Health Law and Policy	Stacy Kern-Scheerer	B+	3	
Professional Responsibility	Mason Lowe	A	2	
William & Mary Law Review	Nathan Oman	P	1	

Fall 2019

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COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Citizen Lawyers	Alan Rudlin	P	1	
Employment Discrimination	Laura Windsor	A	3	
Family Law	Vivian Hamilton	B+	3	
First Amendment: Free Speech & Press	Timothy Zick	A	3	
Judicial Externship	Robert Kaplan	P	2	
Sentencing Law	Katie Schleeter	H	1	
William & Mary Law Review	Nathan Oman	P	2	

Spring 2020

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Administrative Law	Aaron-Andrew Bruhl	P	3	
Food & Drug Law	Stacy Kern-Scheerer	P	3	
Immigration Law	Evan Criddle	P	3	
Law & Literature	Chris Byrne	P	1	
State & Local Government Externship	Catherine Bellin	P	2	
William & Mary Law Review	Nathan Oman	P	1	

Grading System Description

Note to Employers from the Office of Career Services: Transcripts will report student Grade Points Averages to the nearest hundredth. For class rank purposes, however, official GPAs are rounded to the nearest tenth. For example, GPAs falling between 3.05 and 3.14 are all rounded to 3.1. It is therefore important for employers to use official Law School GPAs rounded to the nearest tenth, not the GPA carried to hundredths on transcripts, when evaluating grades.

Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms (i.e., no re-ranking will occur following a summer term). However, William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.

Ranks can vary by semester and by 2L and 3L class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will be given a numerical rank. All ranks of 3.5 and lower will be a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is conceivable that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class. Please note: This measurement is only a general benchmark and is NOT reflective of any specific semester or individual student.

William & Mary Law School
P.O. Box 8795
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Christina M. Jones, Esq.
Professor of the Practice & Director
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September 28, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I am a Professor of the Practice at William & Mary Law School, where I direct the Parents Engaged for Learning Equality (PELE) Special Education Advocacy Clinic. I am writing to strongly support Catherine Bell's candidacy for a clerkship in your chambers. She is a gifted writer, thorough researcher, and sharp thinker that will be a wonderful addition to your team.

Catherine enrolled in the PELE Clinic in Fall 2018. In my two years at the helm, I have never worked with a more talented legal writer. As a student at the top of her class, Catherine immediately impressed. She was assigned two major writing assignments for her cases, both involving students who had been diagnosed with disabilities but were also "gifted and talented" or "twice-exceptional." This presents a very unique hurdle to finding the children eligible for special education services under the law, as they may be keeping up academically in spite of their disabilities, but struggling in other areas. It ended up being the topic of her student note, which we talked about extensively at her prompting; I think her solution to this complex problem is as good as I have heard, and clearly demonstrates her deep thinking on the matter.

Catherine did excellent work in both cases; she dug through complex psychological and educational reports, and undertook painstaking legal research to make sure no stone was left unturned. Not only did she write strong advocacy pieces, but she thoroughly anticipated the other side of the argument and circumvented it. She also excelled in counseling the clients and providing honest assessments of their cases; she demonstrated that she could clearly separate her tone and thinking from subjective to objective. That bodes well for Catherine's level-headed assessment of briefs and matters that she will see in your chambers.

I saw Catherine grow significantly in her confidence as a lawyer and thinker over the term. She entered the semester as many students do, somewhat concerned about being asked to do a lawyer's work after one year of law school (albeit under the supervision of a lawyer). In a short amount of time, Catherine went from being apprehensive to assertive, confidently sharing her thinking on a case and how she thought it should move forward, rather than asking for direction. She undoubtedly asked questions, and very shrewd ones at that, but she learned to try on her own, seek limited clarification and guidance, and trudge onward. She knows when to ask for help, and when she has something under control. In the classroom component of the course, Catherine similarly blossomed from a rather quiet student to one who was frequently volunteering and adding very insightful thoughts to the conversation. I expect she will similarly contribute to and raise the level of dialogue among her peers in your chamber.

Catherine is professional, polite, and agreeable. I am thoroughly convinced she has the makings of an excellent clerk. I will gladly sing Catherine's praises at any time, so please do not hesitate to contact me with any further questions.

Sincerely,

/s/

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Director, PELE Special Education Advocacy Clinic
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Erin Joy Hendrickson
Professor of the Practice of Law

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September 28, 2020

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Re: Clerkship Applicant Catherine Bell

Dear Judge Hanes:

I served as Catherine Bell's legal writing professor during both semesters of her 1L year. Without question, Catherine's analysis and writing skills are among the best I have come across in my six years of teaching. Due to her abilities and also her exceptional work ethic, I have no doubt that she would make an outstanding judicial clerk.

Over the course of the year, students in my class learn how to analyze complex legal issues and develop the ability to present this analysis in objective and persuasive legal memoranda. From our very first (ungraded) assignment in the fall, it was clear to me that Catherine had a natural aptitude for legal writing. She had a knack for recognizing the applicable lines of reasoning in precedent cases, and her writing style was remarkably clear and concise. Despite this strong natural skill, Catherine nevertheless dedicated a substantial amount of her time and effort to our course. Whenever I met with her to discuss early drafts of her work (as I do with all of my students), she was extremely professional, and she was very well prepared. It was always clear to me that she had already read the most important cases and our fact pattern multiple times, and that she had already edited and revised her own work prior to our meeting. With each subsequent draft, Catherine improved even more, and the quality of both her fall and spring semester final (graded) memos was head and shoulders above the others in her class section.

Catherine's fall semester objective memo was especially effective at recognizing the legally relevant facts of our case (including facts that many of her peers overlooked) and in fully fleshing out lines of reasoning that could support opposing conclusions. Her spring semester pre-trial memo included especially strong analysis on how to best interpret statutory language, and it rebutted counter-points in an effective and persuasive manner. In addition, Catherine has strong attention to detail. She received the highest "Bluebooking" score of any student in her class section, based on her effective and accurate use of citations. As a result of her hard work and dedication, Catherine earned an "A" in both semesters of our course, and she also received the CALI Excellence Award for her class section for both the fall and spring semesters. Even more impressive, she further earned the "Dean's Legal Writing Award," meaning that she wrote the strongest spring semester memo of any student in the W&M 1L class, as judged by our entire legal writing faculty.

Despite all of these achievements, Catherine never ceases to strive to learn and improve. During her 1L year, she regularly attended office hours to ask thoughtful questions about the assignments and also to discuss best practices for legal writing more generally. Though she was incredibly enthusiastic about the Dean's Award, she expressed surprise and humility, telling me that she thought she could still do better. In an effort to hone her skills even more, Catherine dedicated much time during her 2L year to working on her Law Review note, Endrew's Impact on Twice-Exceptional Students, and I was thrilled (though not at all surprised) to learn that it was selected for publication after a blind-review process.

For all of these reasons, I very much hope you will grant Catherine an opportunity to interview for the position. Please do not hesitate to contact me if you would like to discuss her skills or qualifications further.

Sincerely,

/s/

Erin J. Hendrickson

Erin J. Hendrickson - ejhendrickson@wm.edu - 757-221-7457

Catherine Bell

505 6th Street SW Apt. 303 ♦ Roanoke, Virginia 24016 ♦ cabell@email.wm.edu ♦ (919) 219-6690

WRITING SAMPLE

I prepared this persuasive memorandum during my Legal Research and Writing class. This paper is substantially my own work.

**IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ALABAMA**

Ernestine Petrillo,)	
)	
<i>Plaintiff</i>)	
)	
v.)	Civil Action No: 00-85FD
)	
Linwood Rooks, et al.,)	Blind Grading # EHS1308
)	I certify that this document contains
<i>Defendants</i>)	3400 words.

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO
COMPEL DEFENDANT YUN TO ANSWER DEPOSITION QUESTIONS
AND IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE EXHIBIT C
OF PLAINTIFF'S MOTION TO COMPEL**

INTRODUCTION

Defendant Reverend Yun, Senior Pastor and founder of Defendant Bald Mountain Community Church (BMCC), has throughout her ministry become “the repository of many [communicants’] confidences.” Disregarding the strong legislative protections of such communications, Plaintiff Petrillo, a former BMCC congregant, now moves to compel Reverend Yun to answer deposition questions and disclose her December 2014 communication with Esther Borzoi. This Court has already determined that it has subject matter jurisdiction over this action.

Reverend Yun’s communication with Borzoi, memorialized in Exhibit C, falls within clergy privilege’s wide-reaching scope. Thus, Plaintiff’s motion should be denied. First, Reverend Yun, who “often” counseled Borzoi, acted in her “spiritual advisor” role. Plaintiff narrowly focuses on Reverend Yun’s role as Senior Pastor; however, the communication, by Borzoi’s recollection, overwhelmingly focused on Borzoi’s “feelings.” Second, Borzoi

demonstrated her intent to speak confidentially by directly requesting confidentiality. Given Reverend Yun and Borzoi's counseling history and the communication's private nature, Borzoi could "reasonabl[y] expect[]" Reverend Yun to honor this intent. Finally, although Borzoi claims to have waived her privilege, communicants and clergymen possess equal rights in claiming clergy privilege. Compelling Reverend Yun to answer deposition questions would erroneously constrict clergy privilege and disregard legislative intent. Thus, Defendants respectfully request that this Court deny Plaintiff's Motion to Compel Defendant Yun to Answer Deposition Questions and grant Defendants' Motion to Strike Exhibit C of Plaintiff's Motion to Compel.

STATEMENT OF FACTS

After attending seminary, Reverend Yun founded BMCC and became Senior Pastor. (Yun Dep. 5:7–26.) BMCC was intended to differ from the hierarchical denominations. (*Id.* 5:10–19.) Pastors at BMCC are largely "autonomous" and are able to follow their "calling" without overburdening, "inappropriate" supervision. (*See id.* 11:1–4, :15.) Thus, while Reverend Yun has "supervisory authority," (*id.* 10:27–11:1), she has also been able to pursue her own "interest[]": pastoral counseling, (*see id.* 7:21–26).

As pastoral counselor, Reverend Yun has become "the repository of many [communicants'] confidences." (*Id.* 12:15.) One such communicant, Esther Borzoi, a long-time BMCC member, participated in counseling with Reverend Yun and "often confided in her about matters of personal and spiritual concern." (*See Pl.'s Mot. to Compel Ex. C* ¶¶ 1–2.)

Four years after joining BMCC, Borzoi began part-time work at the church. (*See id.* ¶ 1.) Shortly after beginning employment, Borzoi heard rumors (from friends and an assistant pastor) about associate pastor Reverend Rooks' conduct. (*See id.* ¶¶ 1, 4.) These rumors made Borzoi uncomfortable. (*Id.* ¶ 5.) After "frett[ing]" for approximately one month, Borzoi decided to relay

the rumors based on her status “[a]s an employee,” as a “church member,” and “[a]s a ‘work in progress’ type of human being.” (*Id.* ¶¶ 6–7.)

Prior to the communication, Borzoi asked Reverend Yun if she could speak with Yun “in confidence about a matter that was worrying [her].” (*Id.* ¶ 6.) Reverend Yun agreed, invited Borzoi into her office where “[n]o one else was present,” and “closed the door.” (*Id.*)

While communicating with Reverend Yun, Borzoi relayed the rumor that “Rooks [was] mixing personal business with pastoral counseling”; however, Borzoi and Reverend Yun also discussed Borzoi’s “feelings.” (*Id.* ¶¶ 4, 6.) Specifically, Borzoi told Yun that she “hesitate[d]” to communicate since her “character flaws” and fear of “mak[ing] someone mad” prevented her from doing “the right thing.” (*Id.* ¶ 5.) Reverend Yun, in response, stated “she would look into” the rumor, but also chose to address Borzoi’s feelings. (*Id.* ¶ 6.) Reverend Yun “congratulated” Borzoi on “speak[ing] up” and, according to Borzoi, helped her “get over [her] excessive fear of making people mad.” (*Id.* ¶¶ 6–7.)

Reverend Yun left the meeting believing that Borzoi had sought confidential “spiritual advice and comfort.” (Dep. 13:19–20.) However, nearly two years later, when Petrillo, another congregant, opened up about her counseling experience with Reverend Rooks, Borzoi claimed that she “waive[d] and release[d] any privilege of confidentiality,” meaning Yun no longer needed to keep the communication “secret.” (Ex. C ¶¶ 8–10.) Borzoi then set forth her recollection of the communication in Exhibit C. (*Id.* ¶ 10.) Despite Borzoi’s claim, Reverend Yun maintains the communication’s confidentiality based on clergy privilege. (Dep. 14:5–15:8.) According to Reverend Yun, Borzoi’s change of heart does not alter her role as “minister of the gospel,” which restricts her from “reveal[ing] secrets that were originally entrusted to [her] in confidence.” (*Id.* 15:6–8.)

ARGUMENT

THE COURT SHOULD DENY PLAINTIFF’S 37(A) MOTION TO COMPEL AND GRANT DEFENDANTS’ MOTION TO STRIKE EXHIBIT C BECAUSE COMMUNICANT’S WAIVER DOES NOT AFFECT REVEREND YUN’S RIGHT TO CLAIM CLERGY PRIVILEGE SINCE REVEREND YUN ACTED IN HER “PROFESSIONAL CAPACITY” AND THE COMMUNICATION WAS CONDUCTED CONFIDENTIALLY.

“[R]ecogniz[ing] the human need to disclose to a spiritual counselor, in total and absolute confidence, what are believed to be flawed acts or thoughts,” *Ex parte Zoghby*, 958 So. 2d 314, 320 (Ala. 2006) (quoting *Trammel v. United States*, 445 U.S. 40, 51 (1980)), the Alabama legislature replaced its preexisting clergy privilege provision, § 12-21-166, with Rule 505, *Tankersley v. State*, 724 So. 2d 557, 560 (Ala. Crim. App. 1998). Rule 505 recognizes the clergyman’s “modern” role by eliminating formalistic barriers and opting for a “broad[]” construction. ALA. R. EVID. 505(b) advisory committee’s note. Since this case is brought under this Court’s diversity jurisdiction and deals with a state law issue, Alabama’s substantive law applies. 28 U.S.C. § 1652 (2012).

Pursuant to Rule 505, both clergyman and communicant can equally claim clergy privilege. ALA. R. EVID. 505(c). Clergy privilege can be claimed whenever a communicant communicates with a clergyman acting in her “professional capacity,” so long as the communication was made “in a confidential manner.” ALA. R. EVID. 505(b). Here, Reverend Yun may claim clergy privilege. Plaintiff concedes that Reverend Yun, Senior Pastor at BMCC, is a clergyman. And, Reverend Yun easily satisfies remaining requirements since she is only required to establish clergy privilege by a preponderance of the evidence. *See Ex parte Zoghby*, 958 So. 2d at 325–26. First, the evidence demonstrates that Reverend Yun worked with Borzoi in her “spiritual advisor” role. Both the communication’s content and their prior counseling relationship indicate such. Second, Reverend Yun can establish that the communication was

confidential since the communication was private and Borzoi requested confidentiality. Thus, Reverend Yun—an equal owner of the privilege—can “refuse to disclose” the communication. ALA. R. EVID. 505(b).

A. The Evidence Demonstrates That Reverend Yun Communicated In Her “Professional Capacity” As “Spiritual Advisor” Since The Communication’s Content Focused On Personal Issues And A Counseling Relationship Existed Between Reverend Yun And Communicant.

Prior to Rule 505, communication, to fall within the scope of a clergyman’s “professional capacity,” was limited to prescribed content, e.g. “marital problem[s].” *Ex parte Zoghby*, 958 So. 2d at 321 (quoting *Santmier v. Santmier*, 494 So. 2d 95, 97 (Ala. Civ. App. 1986)). Though this framework covered many communications, the legislature, realizing the “broad[]” role of clergymen, eliminated such formulistic categories, opting for a more encompassing standard. *Id.*

While Rule 505(b) retains the requirement that communication occur in the clergyman’s “professional capacity,” the legislature intended for such language to invoke “all” communication where the clergyman acts as a “spiritual advisor in the *broadest* sense.” ALA. R. EVID. 505(b) advisory committee’s note (emphasis added). Following legislative intent, Alabama courts interpret the clergyman’s role as “spiritual advisor” expansively, generally only stripping a clergyman of her role if she assumes a dual role that overwhelms the spiritual nature of her communications. *See Ex parte Zoghby*, 958 So. 2d at 322, 325–26; *Tankersley*, 724 So. 2d at 560–61. Specifically, the Alabama Supreme Court maintains that whenever some “spiritual care, guidance, or consolation” is manifest under “the totality of the facts,” a communication is properly within a clergyman’s “professional capacity.” *See Ex parte Zoghby*, 958 So. 2d at 322, 325.

A clergyman holding a dual role can act as “spiritual advisor” despite believing that her dual role controlled the communication. *See Tankersley*, 724 So. 2d at 560–61. In *Tankersley v.*

State, a clergyman suggested that clergy privilege did not apply because she acted in her dual, non-pastoral role as friend and, additionally, communicant *never* indicated that the communication was based on her spiritual role. *See id.* at 561. Nevertheless, the court held that the clergyman acted primarily as “spiritual advisor” since communicant and clergyman’s counseling history likely “influenced” communicant’s decision to communicate. *Id.*

The content of Reverend Yun and Borzoi’s communication confirms that Reverend Yun acted in her “spiritual advisor” role. Though the communication involved an allegation of misconduct, a cursory examination of the overall content confirms that a second subject—Borzoi’s personal growth—dominated the communication. Throughout the communication, Borzoi used the allegation as a platform to discuss her “feelings.” Reverend Yun focused minimally on the allegation (mentioning “she would look into” it) and instead, used the opportunity to “help [Borzoi] get over [her] excessive fear.” This indicates that Reverend Yun, unlike the clergyman in *Tankersley*, recognized that her primary role was to guide Borzoi. Even when discussing the allegation, Reverend Yun connected the communication back to Borzoi’s development, “congratulat[ing]” her on overcoming “character flaws.”

Though employed at BMCC, Borzoi’s relationship with Reverend Yun should not be described as that of supervisor-employee. This claim overemphasizes their employment relationship (Borzoi only recently began part-time employment). Even Borzoi recognized that her employment only partially accounted for her approaching Reverend Yun. Her role “[a]s church member” and “[a]s a ‘work in progress’ type of human being” also guided her decision.

Additionally, Reverend Yun’s limited supervisory role did not overcome her role as “spiritual advisor.” Thus, any comparison to *Ex parte Zoghby* is overstated. In *Zoghby*, the clergyman was both “the administrative and spiritual head of the Archdiocese.” 958 So. 2d at

316 n.1. However, he acted overwhelmingly in his supervisory capacity when communicating with his communicant (a pastor the clergyman supervised) after receiving allegations of communicant's misconduct. *See id.* at 325–26. Not only did the clergyman initiate communication with the purpose of investigating the allegations, but the clergyman also admitted that his dual role as supervisor guided him: he used the communication “as a major factor” when determining communicant's future employment. *Id.* at 325. Here, however, Reverend Yun's supervisory capacity was limited. Unlike the clergyman in *Zoghby* who viewed himself as supervisor, Reverend Yun believed she acted as “spiritual advisor.” This is unsurprising. The clergyman in *Zoghby*, upon receiving an allegation, was “responsible for directing the investigation”; Reverend Yun, conversely, stated that BMCC pastors were “autonomous” and despite her “supervisory authority,” reviewing another pastor “would have been inappropriate.” *Id.* at 316.

Even if Reverend Yun acted as supervisor for a notable portion of the communication, the communication should still fall within her “spiritual advisor” role. The legislature allows “spiritual advis[ement] in [its] broadest sense.” ALA. R. EVID. 505(b) advisory committee's note. Thus, the legislature would likely reject attempts to disqualify communications as privileged solely because a dual, non-pastoral role made up a notable, but not exclusive, part of the communication. This is especially true when recognizing that a communication cannot be “neatly compartmentalized” into spiritual and secular components. *Ex parte Zoghby*, 958 So. 2d at 328 (Parker, J., dissenting). Requiring such compartmentalization would be impractical and could chill communication. *See id.*; *Simpson v. Tennant*, 871 S.W.2d 301, 310–12 (Tex. App. 1994). Clergymen, unable to differentiate between the spiritual and purely secular, may stifle

communication knowing that the clergyman-communicant relationship could suffer if they are forced to reveal what were assumed to be confidential communications.

The facts, in their totality, demonstrate that Reverend Yun acted in her “professional capacity” as “spiritual advisor.” The communication’s personal content, Borzoi’s established counseling relationship with Reverend Yun, and Rule 505’s expansive construction override any limited supervisory role Reverend Yun held.

B. The Communication Occurred “In A Confidential Manner” Since Communicant’s Statements And The Private Nature Of The Communication Confirm That Communicant Intended And Had A “Reasonable Expectation” Of Confidentiality.

Under Rule 505, “communication is ‘confidential’ [when] it is made privately and is not intended for further disclosure.” ALA. R. EVID. 505(a)(2). Though facially restrictive, absolute privacy is not required. *See* ALA. R. EVID. 505(a)(2) advisory committee’s note. Communicant intent is also used to determine confidentiality. *Id.* However, barring evidence that completely negates intent, e.g. communicating with “unnecessary third parties,” *id.*, intent is satisfied whenever a communicant “reasonabl[y] expect[s]” confidentiality, *Tankersley*, 724 So. 2d at 562. Importantly, “reasonable expectation” requires no “express” request for confidentiality; any “implied understanding” between communicant and clergyman will suffice. *Lucy v. State*, 443 So. 2d 1335, 1341 (Ala. Crim. App. 1983).

Courts generously construe communicants’ “reasonable expectation” of confidentiality. *See Ex parte Zoghby*, 958 So. 2d at 318, 323; *Nicholson v. Wittig*, 832 S.W.2d 681, 685–87 (Tex. App. 1992). In *Zoghby*, a communicant’s assumption of confidentiality was sufficient. 958 So. 2d at 318, 323. There, the court suggested that confidentiality was implied based on communicant and clergyman’s history of confidential communications. *See id.*

Here, Borzoi satisfies Rule 505's stated requirements for confidentiality. Her communication with Reverend Yun was made privately when "[n]o one else was present." Likewise, Borzoi, when communicating, did not intend to "further disclos[e]" the communication—she kept it "secret" for nearly two years. ALA. R. EVID. 505(a)(2).

Moreover, Borzoi intended that the communication be confidential. Unlike the communicant in *Zoghby*, Borzoi stated that "she wanted to speak with [Yun] in confidence." In addition to this "express" request, the communication's circumstances implied confidentiality since the communication took place in a private area (Yun's office) and the communication occurred after Yun "closed the door." *Lucy*, 443 So. 2d at 1341. These actions surpass the mere assumption of confidentiality in *Zoghby* and, importantly, indicate that Borzoi could "reasonabl[y] expect[]" confidentiality, especially since "reasonable expectation" can be found absent communicant action to ensure confidentiality. *See Nicholson*, 832 S.W.2d at 685–87 (finding "reasonable expectation" of confidentiality even though communicant never sought a private area to communicate).

While Borzoi talked with an assistant pastor about Rooks prior to communicating with Reverend Yun, this discussion does not undercut Borzoi's intent for confidentiality. By Borzoi's admission, the assistant pastor actively "told" Borzoi about Rooks' behavior. Nothing indicates that Borzoi relayed information. Even assuming Borzoi did relay information, pre-communication discussion does not necessarily bar confidentiality. *See State v. Archibeque*, 221 P.3d 1045, 1047–48 (Ariz. Ct. App. 2009) (finding confidentiality despite communicant's admission of crime prior to communicant-clergyman communication).

Recognizing that the communication exceeded Rule 505's confidentiality requirements, Plaintiff attempts to shift the focus to the communication's content, claiming that Borzoi could

not “reasonabl[y] expect[.]” confidentiality when revealing potential crime. This claim misconstrues Alabama precedent, which states that only revelations specifically concerning “the commission of future *violent* crimes” are not confidential. *Tankersley*, 724 So. 2d at 561–62 (emphasis added). In *Tankersley*, a communicant’s revelation that “he would kill” his girlfriend was not confidential because a communicant threatening “violent crime[.]” should have “no reasonable expectation” that a clergyman would conceal information involving “the safety of another.” *Id.* at 562.

Borzoi’s revelation is easily distinguished from that in *Tankersley*. Borzoi did not reveal a “threat[.] of violence.” *Id.* She revealed a non-violent act: Rooks’ “mixing of personal business with pastoral counseling.” Unlike *Tankersley*, where “safety of another” barred “reasonable expectation,” here, Borzoi appears to have recognized that her revelation involved no imminent threat, let alone a violent one. *Id.* After all, Borzoi waited approximately one month before communicating with Reverend Yun.

The communication’s private circumstances, Borzoi’s post-communication secrecy, and Borzoi’s express request for confidentiality all indicate that she “intended” and could “reasonabl[y] expect[.]” the communication to remain confidential.

C. Reverend Yun May Claim Clergy Privilege Despite Communicant’s Claim of Waiver Since Rule 505 Explicitly Grants Clergymen A Right To “Refuse To Disclose” Confidential Communications.

Rule 505 unambiguously states that “[clergy] privilege may be claimed by the communicating person . . . or by the clergyman,” thus giving both the power to “refuse to disclose” or “prevent another from disclosing, that confidential communication.” ALA. R. EVID. 505(b)–(c). Unlike other privileges, there is no indication that clergy privilege, for communicant or clergyman, is restricted. *Compare* ALA. R. EVID. 502(c) (permitting attorneys to claim

attorney-client privilege *only* on the client's behalf), *with* ALA. R. EVID. 505(c). Thus, since Alabama courts have analyzed Rule 505 using its "plain meaning," Reverend Yun, Borzoi's clergyman, can claim clergy privilege. *Ex parte Zoghby*, 958 So. 2d at 321.

This result is consistent with Alabama's legislative intent. *See* ALA. R. EVID. 505(c) advisory committee's note. The Alabama legislature contrasted its intention with New York's privilege, which is the communicant's alone. *De'udy v. De'udy*, 495 N.Y.S.2d 616, 620 (N.Y. Sup. Ct. 1985). Unlike New York, Alabama safeguarded the clergyman's independent right to claim clergy privilege. *See* ALA. R. EVID. 505(c) advisory committee's note. Unlike other aspects of clergy privilege which were altered in the construction of Rule 505, the Alabama legislature retained language that the "person or the clergyman" may assert the privilege, *id.*, while also adding a distinct subsection, 505(c), which directly answered "who may claim the privilege," *compare* ALA. CODE § 12-21-166 (2018), *with* ALA. R. EVID. 505(c).

Despite this, Plaintiff constricts Rule 505, suggesting that Borzoi's waiver destroys confidentiality, thereby revoking the privilege entirely. This would, essentially, make Borzoi the sole owner of the privilege and restrict Reverend Yun's independent ability to "refuse to disclose" the communication. ALA. R. EVID. 505(b). Rule 505's plain meaning does not suggest this result. *See* ALA. R. EVID. 505(c). Furthermore, this interpretation, beyond contradicting the legislative intent for Rule 505(c), would also conflict with the Alabama legislature's general intent to make clergy privilege, as a whole, wide-reaching. *See* ALA. R. EVID. 505(c) advisory committee's note; *Ex parte Zoghby*, 958 So. 2d at 321. As the Alabama legislature stated, some states, like New York, adopted policies restricting the clergyman's claiming of the privilege; Alabama, however, has not. ALA. R. EVID. 505(c) advisory committee's note.

Furthermore, adopting Plaintiff's construction could create problematic policy ramifications. Even assuming that restricting the privilege is sensible in this case, such an interpretation would be shortsighted. *See Scott v. Hammock*, 870 P.2d 947, 952 (Utah 1994) (“[A] constricted interpretation of [clergy] privilege does not take into account the essential role that clergy in most churches perform . . .”). Clergymen, recognizing that they may be compelled to disclose previously confidential information at the future whim of communicants may restrict the way they communicate, limiting “care, guidance, and consolation” for fear of future disclosure. *Ex parte Zoghby*, 958 So. 2d at 322. And thus, the “trust and faith [required] on part of both [clergyman and communicant]” would suffer, ultimately eroding the clergyman-communicant relationship. *AmerUS v. Smith*, 5 So. 3d 1200, 1219 (Ala. 2008) (Cobb, C.J., dissenting).

Alabama has unambiguously stated that clergymen may independently claim clergy privilege. Thus, Borzoi's actions do not restrict Reverend Yun's invocation of the privilege.

CONCLUSION

Reverend Yun can claim clergy privilege. First, Reverend Yun acted in her “professional capacity” in her “spiritual advisor” role. Though Borzoi made an allegation regarding Reverend Rooks' behavior, this allegation does not alter the spiritual nature of the communication since, by Borzoi's recollection, the discussion actually centered around her “feelings.” The nature of Reverend Yun's role supports this. BMCC valued pastoral “autonomy”; thus, Reverend Yun's role as supervisor was limited. Moreover, Reverend Yun's relationship with Borzoi was not supervisory. Though Borzoi was recently employed at BMCC, she had a long-established counseling relationship with Reverend Yun that exceeded her short-term employment status. Second, the communication was confidential. Borzoi's intent for confidentiality is clear: she

directly requested confidentiality and, additionally, ensured the communication's privacy by holding it in a private office. And, though Borzoi did speak with another pastor prior to communicating with Reverend Yun, this pre-communication did not impact the communication's confidentiality since the other pastor, not Borzoi, actively relayed the information. Borzoi could also "reasonabl[y] expect[]" Reverend Yun to honor this intent not only based on their prior counseling relationship but also because the communication did not deal with a "threat of violence." Finally, despite Borzoi's claim that she waived her privilege, Rule 505(c) unambiguously grants clergy privilege to both clergyman and communicant. Thus, Reverend Yun has the right to claim the privilege no matter Borzoi's unilateral actions. This evidence, paired with Alabama's long-standing respect and expansive construction of Rule 505, confirms that Borzoi can claim her privilege. Thus, Defendants' respectfully request that Plaintiff's Motion to Compel be denied and Defendants' Motion to Strike Exhibit C be granted.

Respectfully submitted,

The 16 day of April, 2018.

By: Blind Grading # EHS1308

/s/ EHS1308

EHS1308

Attorney for Defendants

OF COUNSEL:

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CERTIFICATE OF SERVICE

I certify that I have sent via TWEN a copy of this Defendants' Memorandum in Opposition to Plaintiff's Motion to Compel Defendant Yun to Answer Deposition Questions and in Support of Defendants' Motion to Strike Exhibit C of Plaintiff's Motion to Compel to:

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613 South Henry Street
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ejhendrickson@wm.edu

Respectfully submitted,

The 16 day of April, 2018.

By: Blind Grading # EHS1308

/s/ ~~EHS1308~~

EHS1308

Attorney for Defendants

Applicant Details

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 Last Name **Bent**
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Applicant Education

BA/BS From **University of South Florida**
 Date of BA/BS **May 2015**
 JD/LLB From **University of Florida Fredric G. Levin College of Law**
<https://www.law.ufl.edu/careers>
 Date of JD/LLB **May 1, 2019**
 Class Rank **10%**
 Law Review/Journal **Yes**
 Journal(s) **Florida Law Review**
 Moot Court Experience **No**

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **Yes**
Post-graduate
Judicial Law Clerk **Yes**

Specialized Work Experience

Specialized Work **Appellate, Death Penalty, Habeas, Prison**
Experience **Litigation, Pro Se, Social Security**

Recommenders

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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

ADAM A. BENT

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April 28, 2022

Dear Judge Hanes:

I write this letter to you, not beginning with my accolades, class rank, or academic achievements. But rather, I begin with what it has taken for me to arrive at this moment to write you. By all accounts, my life is one that should have never amounted to anything—let alone applying for a clerkship position with you.

From the outset, the odds were not in my favor. Prior to being born, my father abandoned me (to this day I have yet to meet my father). Unfortunately, when I was a young child, my mother was suffering from severe schizophrenia—unable to care for a child. With nowhere to turn, my grandmother took guardianship of me. Regrettably, my mother's condition deteriorated further, requiring permanent commitment at a psychiatric institution (where she remains to this day). Accordingly, during my childhood, while my peers were enjoying their youth, I spent my free time trying to be supportive of my mother—visiting her as often as possible. Sadly, I faced increasing adversity. Shortly before turning 18, my grandmother—my sole guardian—suddenly passed away. In turn, my childhood home was sold to satisfy my grandmother's debts. Left with nothing, I was homeless. Despite the hardships, I was determined to forge ahead; I was determined to not let my life's circumstances dictate my future. I found stable work as a pharmacy technician, enrolled in college, and worked full-time while pursuing my B.A. as a full-time student—graduating as valedictorian with a perfect 4.0 GPA.

Thereafter, I obtained a scholarship to attend a top-ranked law school, where I again excelled academically. I became Managing Editor for law review, was a teaching and research assistant to several professors, and graduated in the top 7% of my class. Additionally, I was nominated by my law school peers and professors to be Student Commencement Speaker at graduation. Following law school, I knew that I eventually wanted to pursue a judgeship. Accordingly, I began clerking, with my most recent position as a clerk for the Chief Justice of the Florida Supreme Court.

Therefore, through sheer grit and determination, I have transformed my life from one with very few prospects, to one to be able to apply for a clerkship with you. I am extremely confident that if given the opportunity, I would use my tenacity, aptitude, and work ethic towards being a phenomenal clerk for you.

Attached to this application are the following: CV, writing sample, transcripts, and letters of recommendation. I would welcome any opportunity to interview with you. I truly appreciate your time and consideration.

Sincerely,

Adam A. Bent
Adam A. Bent

Curriculum Vitae

ADAM A. BENT

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Email: adamallenbent@gmail.com

EXPERIENCE

Florida Supreme Court, Tallahassee, FL

Law Clerk to the Chief Justice – 2020 to 2022

Florida First District Court of Appeal, Tallahassee, FL

Law Clerk to Judge Thomas D. Winokur – October 2019 to August 2020

State Attorney's Office for the Eighth Judicial Circuit, Bronson, FL

Certified Legal Intern – January 2019 to May 2019

State Attorney's Office for the Eighth Judicial Circuit, Gainesville, FL

Certified Legal Intern – August 2018 to December 2018

Wicker, Smith, O'Hara, McCoy & Ford, P.A., Orlando, FL

Summer Associate – May 2018 to August 2018 (offered post-law school position; declined to pursue post-law school judicial clerkships)

U.S. District Court for the Southern District of Florida, Miami, FL

Judicial Intern to Judge John O'Sullivan – June 2017 to August 2017

Southern Legal Counsel, Gainesville, FL

Legal Intern – May 2017 to June 2017

Disability Rights Florida, Gainesville, FL

Legal Intern – May 2017 to June 2017

EDUCATION

University of Florida Levin College of Law, Gainesville, FL (top 6 public law school nationally)

Juris Doctor (J.D.), Law – May 2019

Class Rank:

- 3.65 GPA (top 7% of class)

Honors:

- Student Commencement Speaker for graduating class (nominated and selected by law school faculty and peers)
- Recipient of Dean's Scholarship
- Dean's List (every semester)

Activities:

- Managing Research Editor, *Florida Law Review*
- Teaching Assistant (Professor Jennifer Zedalis) (trial advocacy)
- Research Assistant (Dean Emeritus Jon L. Mills)
- Research Assistant (Professor Danaya Wright)

University of South Florida, Tampa, FL (top-ranked public research university)

Bachelor of Arts (B.A.), Political Science – May 2015

Class Rank:

- 4.0 GPA (valedictorian)

Honors:

- King O'Neal Scholar (USF's most prestigious academic accolade; awarded to students who graduate with a perfect 4.0 GPA in all coursework)
- Recipient of USF Academic Achievement Scholarship
- USF Honors College (achieved 4.0 GPA within all Honors College coursework)
- Dean's List (every semester)

Honors Thesis:

- *The U.S. Supreme Court and the Nature of Constitutional Interpretation: An Analysis of Equal Rights for Women*
- Honors thesis chosen to represent the University of South Florida for national political science honors thesis competition

SPEAKING ENGAGEMENTS

Guest Speaker, “*Constitutional Law: Separation of Powers*,” University of South Florida, *Tampa, FL* (October 19, 2020)

Commencement Speaker, Student Commencement Speaker for 2019 Graduating Class, University of Florida Levin College of Law, *Gainesville, FL* (May 17, 2019)

Presenter, “*The Proposed Equal Rights Amendment*” Cosmos Club, *Washington D.C.* (October 29, 2018)

Panelist, “*How to Succeed in Law School*,” University of Florida Levin College of Law, *Gainesville, FL* (March 15, 2019)

Moderator, “*UF Law Career Conference: Federal, State, and Local Government*,” University of Florida Levin College of Law, *Gainesville, FL* (September 7, 2018)

Panelist, “*On Campus Interviews: Successful Navigation of Obtaining Employment*,” University of Florida Levin College of Law, *Gainesville, FL* (August 6, 2018)

Presenter, “*The U.S. Supreme Court and the Nature of Constitutional Interpretation: An Analysis of Equal Rights for Women*,” University of South Florida Research Colloquium, *Tampa, FL* (April 9, 2015)

Commentator, “*The Role of Historical Displays in Teaching About Social Injustice and Current Day Social Responsibility*,” Florida A&M University (FAMU), *Tallahassee, FL* (February 1, 2015)

Presenter, “*Highlights and Pitfalls: The American University System*,” Aix-Marseille University, *Marseille, France* (June 1, 2012)

PUBLICATIONS

Self-Authored Publications

Tenant-Victims, Abusers, and No Way to Escape: The Need for an Amendment to the Florida Residential Landlord and Tenant Act, 25 WM. & MARY J. RACE, GENDER & SOC. JUST. 607 (2019)

Contributing Researcher & Editor

Danaya C. Wright, “*Great Variety of Relevant Conditions; Political, Social, and Economic*”: *The Constitutionality of Congressional Deadlines on Amendment Proposals Under Article V*, 28 WM. & MARY BILL RTS. J. 45 (2019)

HONORS & AWARDS

Outstanding Achievement Pro Bono Certificate, University of Florida Levin College of Law, *Gainesville, FL* (May 17, 2019)

Certificate in Criminal Jurisprudence, University of Florida Levin College of Law, *Gainesville, FL* (May 17, 2019)

Evelyn Hartman Scholarship, University of Florida Levin College of Law, *Gainesville, FL* (January 2019 – May 2019)

Advanced Prosecution Clinic, University of Florida Levin College of Law, *Gainesville, FL* (January 2019 – May 2019)

Federal Bar Association’s Student Criminal Law Scholarship, Federal Bar Association, Criminal Law Section, *Arlington, VA* (April 22, 2019)

Certificate of Excellence, Prosecution Clinic at the University of Florida Levin College of Law, *Gainesville, FL* (November 14, 2018)

Levin College of Law Scholar, University of Florida Levin College of Law, *Gainesville, FL* (August 2017 – May 2018)

Frank Maloney Scholarship, University of Florida Levin College of Law, *Gainesville, FL* (August 2016 – May 2017)

Dean's List, University of Florida Levin College of Law, *Gainesville, FL* (August 2016 – May 2019)

Dean's Scholarship, University of Florida Levin College of Law, *Gainesville, FL* (August 2016 – May 2019)

Lexis Nexis Scholarship, Emory University School of Law, *Atlanta, GA* (July 2016)

King O'Neal Scholar, University of South Florida, *Tampa, FL* (May 2015)

Pi Sigma Alpha Honors Thesis Nominee, University of South Florida, *Tampa, FL* (May 2015)

USF Honors College, University of South Florida, *Tampa, FL* (January 2013 – May 2015)

USF Academic Achievement Scholarship, University of South Florida, *Tampa, FL* (January 2013 – May 2015)

Dean's List, University of South Florida (January 2013 – May 2015)

Palma & Allen Cole Distinguished Academic Achievement Scholarship, Polk State College, *Winter Haven, FL* (December 13, 2012)

Dean's List, Polk State College, *Winter Haven, FL* (2011-2012)

ASSOCIATIONS

Florida Supreme Court Historical Society, *Tallahassee, FL* (2018 – Present)

University of Florida Alumni Association, *Gainesville, FL* (2019 – Present)

University of South Florida Alumni Association, *Tampa, FL* (2015 – Present)

Alpha Epsilon Lambda, National Honor Society of Graduate and Professional School Students, University of Florida Levin College of Law, *Gainesville, FL* (March 13, 2019 – May 17, 2019)

Alpha Phi Sigma, National Criminal Justice Honor Society, University of Florida Levin College of Law, *Gainesville, FL* (January 2019 – May 17, 2019) (founding chapter member)

Phi Alpha Delta Law Fraternity, Society of Scholars, University of Florida Levin College of Law, *Gainesville, FL* (January 24, 2019 – May 17, 2019)

Criminal Law Association, University of Florida Levin College of Law, *Gainesville, FL* (January 2017 – May 2019)

Mortar Board National College Senior Honor Society, University of South Florida, *Tampa, FL* (April 10, 2014 – May 2, 2015) (vice president)

The Honor Society of Phi Kappa Phi, University of South Florida, *Tampa, FL* (April 6, 2014 – May 2, 2015)

Pi Sigma Alpha National Political Science Honor Society, University of South Florida, *Tampa, FL* (April 4, 2014 – May 2, 2015)

Phi Sigma Theta National Honor Society, University of South Florida, *Tampa, FL* (April 1, 2014 – May 2, 2015)

Golden Key International Honour Society, University of South Florida, *Tampa, FL* (October 16, 2013 – May 2, 2015)

Delta Epsilon Academic Honor Society, University of South Florida, *Tampa, FL* (September 10, 2013 – May 2, 2015)

Tau Sigma National Honor Society, University of South Florida, *Tampa, FL* (April 13, 2014 – May 2, 2015)

Sigma Alpha Lambda National Leadership & Honor Society, University of South Florida, *Tampa, FL* (April 9, 2013 – May 2, 2015)

Phi Theta Kappa Honor Society, Polk State College, *Winter Haven, FL* (August 6, 2010 – December 13, 2012)

VOLUNTEER SERVICE

University of Florida Levin College of Law, Gainesville, FL
Appellate Advocacy Judge – April 2019

- Performed as an appellate judge for oral arguments for first-year law students.

University of Florida Levin College of Law, Gainesville, FL

Teaching Assistant/Tutor – August 2018 to December 2018

- Criminal Law TA/tutor for 200+ first-year law students. TA/tutor position was in lecture settings.

University of Florida Levin College of Law, Gainesville, FL

Teaching Assistant/Tutor – January 2018 to May 2018

- Federal Civil Procedure TA/tutor for 100+ first-year law students. TA/tutor position was in lecture settings.

University of Florida Levin College of Law, Gainesville, FL

Teaching Assistant/Tutor – August 2017 to May 2018

- Torts TA/tutor for 200+ first-year law students. TA/tutor position was in lecture settings.

Alachua County Humane Society, Gainesville, FL

Assistant – August 2016

- Assisted with care and maintenance of animals.

Guardian Ad Litem, Bartow, FL

Advocate – June 2015 to July 2015

- Advocated for abused, abandoned, and neglected children.

Meals on Wheels, Winter Haven, FL

Meal Distributor – June 2015 to August 2015

- Delivered prepared meals to low-income and non-able-bodied persons.

NAMI (National Alliance on Mental Illness), Winter Haven & Palm Beach, FL

Fundraiser – November 2015

- Utilized social media and networking to raise money for NAMI.

Florida's Thirteenth U.S. Congressional District, Clearwater, FL

Assistant – 2015

- Aide to moderator of special election debate.

OTHER WORK EXPERIENCE

CVS Pharmacy, Winter Haven, FL

Pharmacy Technician Manager – January 2010 to August 2016

- Maintained this full-time position while pursuing B.A. full-time and to save for law school living expenses

REFERENCES

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University of Florida Fredric G. Levin College of Law
Cumulative GPA: 3.65 (Top 7% of Class)

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law		B+	4	
Legal Writing		B+	2	
Intro to Lawyering		B	1	
Torts		A-	4	
Criminal Law		A-	3	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure		A	4	
Appellate Advocacy		A-	2	
Property		A-	4	
Legal Research		B+	1	
Contracts		B	4	

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Criminal Procedure-Adversarial Systems		A	3	
Professional Responsibility		A	3	
Corporations		A-	3	

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
First Amendment Law		A-	3	
Legal Drafting		A-	2	
Statutory Interpretation		A	2	
Trial Practice		S	4	(Trial Practice is simply pass (S)/fail (U))
Evidence		A-	4	

Summer 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Law Review		S	1	
Law Review		S	1	
Law Review		S	1	

Law Review members get three credits for being on Law Review, which can be used during any semester. "S" signifies that the Law Review member has fulfilled, or is on track to fulfill, their Law Review obligations.

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Advanced Trial Practice		S	1	Advanced Trial Practice is pass (S)/fail (U)
Mediation Advocacy		S	3	Mediation Advocacy is pass (S)/fail (U)
Race, Crime & Law		A	3	
Prosecution Clinic		A-	9	

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Florida Criminal Procedure		A	2	
Pretrial Practice		S	3	Pretrial Practice is pass (S) or fail (U)
Advanced Trial Practice		S	1	Advanced Trial Practice is pass (S) or fail (U)
Adversary Systems - Police Practices		A-	3	
Advanced Criminal Prosecution Clinic		S	6	Advanced Criminal Prosecution Clinic is pass (S) or fail (U)

Adam Bent
University of South Florida
Cumulative GPA: 4.0 (First in Class)

Spring 2010

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
General Psychology		A	3	
Composition I		A	3	
Music Appreciation		A	3	
Intro to Humanities		A	3	
Composition II		A	3	

Fall 2010

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Wellness Concepts		A	2	
U.S. History		A	3	
Introduction to Literature		A	3	

Spring 2011

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Intro to Sociology		A	3	
Abnormal Psychology		A	3	
Human Development		A	3	
Algebra		A	3	

Summer 2011

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Intermediate Algebra		A	3	
Biology I		A	4	

Fall 2011

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
College Algebra		A	3	
First Year French I		A	5	

Spring 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
First Year French II		A	5	
Statistics		A	3	
Biology II		A	4	

Fall 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Combined Precalculus & trigonometry		A	5	
Oceanography		A	4	

Spring 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Honors Geographical Perspectives		A+	3	
Constitutional Law I		A	3	
Russia		A	3	
Public Administration		A+	3	

Summer 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
American National Government		A	3	
Comparative Politics		A+	3	

Fall 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Empirical Political Analysis		A	3	
Constitutional Law II		A	3	
Honors Behavioral Science		A+	3	
Political Theory		A	3	

Spring 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Ethics		A+	3	
Modern Political Theory		A	3	
Urban Politics		A	3	

Summer 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Honors College Thesis I		A	3	
Macroeconomics		A+	3	

Fall 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Honors College Thesis II		A	3	

Public Policy	A	3
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Spring 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Honors Arts and Humanities		A	3	
Politics of Developing Areas		A+	3	
Successfully completed the Honors College Program; Summa Cum Laude				

April 28, 2022

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to recommend Adam Bent for a clerkship in your chambers. I got to know Mr. Bent as a student in my Criminal Law class and then further in my capacity as the Chair of the Clerkship Committee for the University of Florida Levin College of Law. I enthusiastically recommend this remarkable student for a clerkship in your chambers.

In my thirteen years of teaching, I might have never encountered a more resilient, determined, and ultimately successful student. Mr. Bent has given me permission to share his personal story with you. Mr. Bent's mother suffers from paranoid schizophrenia, and his father left when he was young. Mr. Bent's grandmother took guardianship of him when he was a child. When his mother's condition deteriorated, his grandmother admitted her to the local hospital as an involuntary psychiatric inpatient. During visits, Mr. Bent witnessed how poorly individuals with mental illness could be treated. He witnessed the staff's lack of empathy, compassion, and sense of moral conscience and the deprivation of patients' civil rights for the sake of convenience and laziness. This experience inspired a determination to pursue a career that holds fairness and justice as its cornerstones. Mr. Bent decided to become an attorney and hopes eventually to become a judge.

When Mr. Bent was eighteen years old, his grandmother passed away. In the aftermath, Mr. Bent sold his grandmother's home to pay off the reverse mortgage, lost his car, and put his dog up for adoption. He became homeless. Destitute, he reached out to a close friend for shelter. Amazingly, Mr. Bent committed to use his negative circumstances to strengthen his resolve. Following his dream of becoming an attorney, he worked odd jobs while he sought stable employment to save money for school. Mr. Bent recognized the immediate demand for healthcare workers and enrolled in a pharmacy technician certification program. He graduated at the top of his class. The stable, fulltime job he then found at a pharmacy allowed him to pay his way through school at the local community college and then at the University of South Florida. He achieved a 4.0 grade point average at both schools, all while working fulltime and commuting 10 hours each week.

Mr. Bent continued his academic success at law school. He graduated with a 3.65 GPA, which placed Mr. Bent in the top 7% of his class. Mr. Bent wrote on to the Florida Law Review, and has a published law article, demonstrating his strong writing capabilities. Moreover, Mr. Bent was a Research Assistant and Teaching Assistant to multiple professors during law school. He also was chosen to address his class as the Student Commencement Speaker at his law school graduation—a uniquely prestigious honor. For the last two years, Mr. Bent has clerked for Chief Justice Charles T. Canady of the Florida Supreme Court.

As a student in my Criminal Law class, Mr. Bent was professional, focused, and well-prepared. He participated in class at a high level and did not shy away from offering answers to difficult questions. He regularly emailed me with questions when he sought clarity on an issue. We discussed controversial and difficult subjects in class—and Mr. Bent displayed particular maturity among his peers. I was not surprised when Mr. Bent performed quite well on the final exam and earned an A- in the course.

In summary, I strongly recommend Adam Bent for a clerkship in your chambers. I would be happy to answer any questions you may have and may be reached at 352-273-0794. I hope you will give this fine young man's application serious consideration.

Sincerely,

E. Lea Johnston

University of Florida Research Foundation Professor

Professor of Law

Lea Johnston - johnstonl@law.ufl.edu - 352-273-0794

April 28, 2022

The Honorable Elizabeth Hanes
Spottswood W. Robinson III & Robert R. Merhige,
Jr., U.S. Courthouse
701 East Broad Street, 5th Floor
Richmond, VA 23219

Dear Judge Hanes:

I write to offer my strong recommendation in support of Adam Bent's application for a clerkship with you. I got to know Adam as a student in my first-year Property class. Adam was one of 102 students, but someone who quickly stood out. He was always prepared and asked thoughtful questions both during class and after class. His final exam was very well written. The notes I made to myself at the time included that his paper "identifies issues clearly and correctly". Rereading his answer, I am again impressed by how clearly he identified and defined the major issues and many of the subtle sub-issues I wove into the question. Many student answers spend a fair amount of time wandering around the issue without being able to nail it down precisely. This is one of the skills that I think is hardest for students to learn if they don't have a natural aptitude. Without clear issue identification, efforts at analysis are ungrounded and unfocused. It is a necessary foundation for any clear legal analysis. Adam's analysis then applied the relevant law and focused in directly on the key relevant facts. Again, the analysis was very economical and cut to the heart of the issues. He received a grade of A- in the course, a grade in line with his very strong performance in his other classes to date.

Since having him as a student in Property, I've met with Adam to discuss clerkships, and I agreed to supervise his Note for the Florida Law Review and have completed that process. I have high expectations when a student asks me to supervise a Note with a goal of having it certified as satisfying the advanced writing requirement that all students must complete. One might assume that all law review students would easily produce a Note that reflects strong original research, a well-formulated and clear thesis, and appropriate legal analysis to develop the supporting argument. However, I have not always been satisfied with students' work product. This has not been such a case. With one set of relatively minor revisions, Adam's Note easily met my standard. Indeed, I have encouraged him in his quest to seek publication of the paper, which addresses an issue he first identified during our Property class.

When we studied the Florida Residential Landlord and Tenant Act in Property during his second semester, he raised the question whether the statute provided any options for victims of domestic violence to leave a rented domicile without incurring ongoing liability for rent. After reading through the statute, he didn't see any options that would address this situation. It was a very good question and one I hadn't previously considered, although I have taught this statute for many years. After reviewing the provisions myself, I agreed that it didn't provide any remedy for that situation. This clearly concerned Adam and led him to choose this as a Note topic.

He researched remedies in other jurisdictions, undertook very well-directed research on the broader problem of domestic and other personal violence and its likely impact on tenants in Florida. His paper carefully documents each step in the argument in support of such a remedy and then proposes an amendment to address the problem. This was an ambitious topic for a Note, and while it could be the subject of an even more in-depth article, he did what I consider an excellent job within the constraints of the Note format. His first draft reflected the overly formulaic guidance that the Law Review provides students and led to some woodenness in the writing. However, all it took was some encouragement not to feel so bound to follow the guidance on writing style, and he produced a well-written final draft. There were only a few substantive points on which I recommended he look back at the statute and rethink which provisions were worth discussing in the paper and which were not directly relevant. When I read the final draft, he had more than addressed all the substantive concerns, and the writing was very good.

Based on his exam performance and my close review of his Note, I have complete confidence in Adam's research, analytic, and writing abilities. Were he interested in environmental law, I would be hoping to hire him as a research assistant.

In addition to possessing these critical skills, Adam is a person of greater depth and experience than one might think. In interacting with him, one might assume that he has had a life of privilege and has not encountered any significant obstacles in pursuit of his education and in life. As you can tell from his personal statement, this is not the case. Perhaps these experiences help to explain why Adam is extremely thoughtful, respectful, and sensitive to and grateful for any effort others make on his behalf. For example, not every student realizes and appreciates that supervising their Note is a totally voluntary commitment a professor takes on in addition to all other required commitments and that entails significant time. Adam was extremely sensitive to that and expressed sincere appreciation. But even so, I had no idea that he had experienced such a challenging family situation and had shown such incredible focus, perseverance, and grit in pursuing his goals. He always presents himself professionally, with modesty but confidence. He has a very kind manner and gentle sense of humor. I would expect he would work very well with other clerks and with staff and would be a great team member.

I hope that this information is helpful to you. I know that Adam would both truly appreciate and value the opportunity that a clerkship represents. I am very confident that he would work extremely hard and perform at a high level. And from all I know, I suspect he will use his talents and the experience he gains as a clerk to very good purpose and effect as a lawyer. He is one of those students I will keep my eye on. I expect that he will make all of us who have had the privilege to teach or work with him proud. If you have questions that you think I might be able to answer, please do not hesitate to contact me.

Respectfully,

Alyson C. Flournoy

Alyson Flournoy - Flournoy@law.ufl.edu - 352-273-0610

ADAM A. BENT

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Writing Sample

This writing sample is a published opinion from the Florida Supreme Court. I created the draft majority opinion for the Chief Justice—which required very little editing by the Chief Justice. I played no part in creating or editing any concurring or dissenting opinions, as those portions of the opinion were created by clerks of other justices or the justices themselves.

Supreme Court of Florida

No. SC19-912

STATE OF FLORIDA,
Petitioner,

vs.

BRIAN K. MCKENZIE,
Respondent.

September 23, 2021

PER CURIAM.

The issue in this case is whether a circuit court has jurisdiction to impose a sexual predator designation on an offender who qualifies under section 775.21, Florida Statutes (2018), the Florida Sexual Predators Act, when the sentencing court did not impose the designation at sentencing and the offender's sentence has been completed. This case is before the Court for review of the decision of the Fifth District Court of Appeal in *McKenzie v. State*, 272 So. 3d 808 (Fla. 5th DCA 2019), which decided the issue by holding that imposition of the designation was precluded. The Fifth

District certified that its decision is in direct conflict with the decision of the Third District Court of Appeal in *Cuevas v. State*, 31 So. 3d 290 (Fla. 3d DCA 2010). We have jurisdiction. See art. V, § 3(b)(4), Fla. Const. Because we reject the Fifth District's conclusion that the circuit court was deprived of jurisdiction to impose the sexual predator designation in such circumstances, we quash *McKenzie* and approve *Cuevas*.

BACKGROUND

In 2009, as part of a negotiated plea agreement with the State, Brian K. McKenzie entered a no contest plea to one count of engaging in sexual activity with a child while in a position of familial or custodial authority, in violation of section 794.011(8)(b), Florida Statutes (2002). In accordance with the written plea agreement, McKenzie was sentenced to six months' incarceration, followed by two years of sex offender community control, followed by three years of sex offender probation. Neither McKenzie nor the State appealed the sentence.

McKenzie completed all portions of his sentence in 2015. Based on the completion of McKenzie's sentence, the Department of

Corrections informed McKenzie that he was no longer under its supervision.

In 2018, the State filed a notice with the trial court, stating that McKenzie's original offense, violation of section 794.011(8)(b), was an enumerated offense under section 775.21—which obligated the trial court to designate McKenzie as a sexual predator.

McKenzie filed a written objection, asserting that the court no longer had jurisdiction in the matter because he had completed all the terms of his criminal sentence. The trial court set a hearing on the issue.

After the hearing, the trial court determined that section 775.21 placed an obligation on the court to designate McKenzie as a sexual predator and that McKenzie must comply with the registration requirements for those given such a designation. The trial court relied on the Third District's *Cuevas* opinion, the only district court opinion that then had directly answered the issue before the trial court: whether a trial court has jurisdiction to impose a sexual predator designation under section 775.21 when the offender's sentence has already been completed. *See Cuevas*, 31 So. 3d at 291-92 (holding that "designation as a sexual predator

[under section 775.21] may be ordered *after* a defendant has served his sentence and been released” (emphasis added)). McKenzie appealed the trial court’s decision.

Upon appeal, the Fifth District held that section 775.21 does not grant jurisdiction to a trial court to impose a sexual predator designation on an offender when the offender’s sentence has already been completed. *McKenzie*, 272 So. 3d at 808-09, 811 (“We conclude that the trial court lacked jurisdiction to enter the order [S]ection 775.21 . . . did not grant authority to the trial court to belatedly designate McKenzie as a sexual predator.”). In reaching its holding, the Fifth District noted that section 775.21(5)(a) “references three types of proceedings in which a trial court is to designate an otherwise qualified offender to be a sexual predator.” *Id.* at 810. The court made the following observations regarding section 775.21(5)(a):

[S]ection 775.21(5)(a)1. sets forth the procedure to be followed when an offender is determined to be a sexually violent predator pursuant to a civil commitment proceeding under Chapter 394. [S]ection 775.21(5)(a)2. sets forth the procedure to be followed when an offender is before the court for sentencing. [S]ection 775.21(5)(a)3. sets forth the procedure to be followed when the offender was civilly committed or committed a similar criminal sexual offense in another jurisdiction,

but has established or maintained a permanent, temporary, or transient residence in Florida.

Id. The court stated further, “McKenzie was an offender who should have been, but was not, designated as a sexual predator at the time of sentencing.” *Id.* (citing § 775.21(5)(a)2., Fla. Stat. (2009)).

The Fifth District focused on section 775.21(5)(c), which states in part:

If the Department of Corrections, the [D]epartment [of Law Enforcement], or any other law enforcement agency obtains information which indicates that an offender meets the sexual predator criteria but the court did not make a written finding that the offender is a sexual predator as required in paragraph (a), the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney who prosecuted the offense for offenders described in subparagraph (a)1., or the state attorney of the county where the offender establishes or maintains a residence upon first entering the state for offenders described in subparagraph (a)3.

The court stated, “Notably, . . . section [775.21(5)(c)] references subsections (5)(a)1. and (5)(a)3., but fails to reference subsection (5)(a)2.—the subsection applicable to McKenzie.” *McKenzie*, 272 So. 3d at 810.

The Fifth District reasoned that the absence of a reference to section 775.21(5)(a)2. in section 775.21(5)(c) means that section 775.21(5)(c) does “not provide a ‘recapture’ provision for offenders

described in subsection (5)(a)2.” *Id.* at 811 (citing *Cuevas*, 31 So. 3d at 292 (Shepherd, J., dissenting)). Accordingly, the Fifth District concluded, for offenders who fall under section 775.21(5)(a)2., section 775.21 does not grant jurisdiction to trial courts to designate the offender as a sexual predator if the offender’s sentence has already been completed. *Id.* The Fifth District reversed, remanded, and certified conflict with the Third District’s *Cuevas* opinion. *Id.*

The Certified Conflict Case: *Cuevas*

Defendant Cuevas “entered a plea of guilty to charges of lewd and lascivious molestation on a child under 12 and lewd and lascivious conduct on a child under 16, in violation of sections 800.04(5)(b) and 800.04(6)(b), Florida Statutes (2000),” which were enumerated offenses under section 775.21. *Cuevas*, 31 So. 3d at 291. Cuevas was sentenced to 56 months of incarceration, but the trial court failed to designate Cuevas as a sexual predator at the time of sentencing. *Id.* Shortly before Cuevas was released from incarceration, the State filed a motion with the trial court to designate Cuevas as a sexual predator under section 775.21. *Id.* Cuevas was released from incarceration prior to the trial court

setting a hearing on the State's motion. *Id.* After the hearing, the trial court granted the State's motion to designate Cuevas a sexual predator under section 775.21. *Id.* Cuevas appealed.

Upon appeal, the Third District held that when an offender was required to be designated a sexual predator under 775.21 at the time of sentencing but the trial court failed to meet that requirement, section 775.21(5)(a)2. does not bar the trial court's subsequent exercise of jurisdiction. *Id.* The court may still impose the sexual predator designation after the completion of the offender's sentence. *Id.* In reaching its holding, the Third District noted that section 775.21(4)(a) places an obligation on the trial court to designate an offender as a sexual predator. *Id.* n.2 (noting that section 775.21(4)(a) states that "an offender shall be designated" as a sexual predator).

The court then turned its attention to section 775.21(5)(c). *Id.* at 292. The Third District explicitly rejected the argument that the mentioning of sections 775.21(5)(a)1. and 775.21(5)(a)3. in section 775.21(5)(c) thwarted the trial court's jurisdiction. *Id.* The court stated that "[a] careful reading of the special language applicable to the two categories (section[s] 775.21(5)(a)1. and [775.21(5)(a)]3.)

reveals that those are special notice and venue rules for those special cases, not exclusive descriptions of the only circumstances in which the State can perform its duty after the defendant is sentenced.” *Id.* (footnote omitted). The court explained further:

In the case of [s]ection 775.21(5)(a)1., a sexually violent predator under [s]ection 775.21(4)(d), one of the three enumerated state offices *must* notify the state attorney who prosecuted the offense. In the case of [s]ection [775.21](5)(a)3., a sexual predator who was convicted of a qualifying offense in another jurisdiction before establishing or maintaining a residence in a Florida county, notice is to be given to the state attorney of that new county. In the case of a person like Cuevas, indisputably qualified to be designated a sexual predator but not designated at sentencing as the Legislature directed, no special notifications or interjurisdictional rules are required, and [s]ection 775.21(5)(c) then specifies (without limitation) that the “state attorney shall bring the matter to the court’s attention in order to establish that the offender meets the sexual predator criteria.”

Id. n.3 (quoting § 775.21(5)(c), Fla. Stat.).

ANALYSIS

To resolve the certified conflict, we are called upon to determine whether a circuit court has jurisdiction to impose a sexual predator designation on an offender who qualifies under section 775.21, when the designation was not imposed at sentencing and the offender’s sentence has been completed. This

question of statutory interpretation is subject to de novo review. See *Bay Cnty. v. Town of Cedar Grove*, 992 So. 2d 164, 167 (Fla. 2008).

As we have stated, “In interpreting . . . statute[s], we follow the ‘supremacy-of-text principle’—namely, the principle that ‘[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.’” *Ham v. Portfolio Recovery Associates, LLC*, 308 So. 3d 942, 946 (Fla. 2020) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012)). “[E]very word employed in [a legal text] is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it.” Joseph Story, *Commentaries on the Constitution of the United States* 157-58 (1833), *quoted in* Scalia & Garner, *Reading Law* at 69. “Context always matters” because “sound interpretation requires paying attention to the whole law, not homing in on isolated words or even isolated sections.” *King v. Burwell*, 576 U.S. 473, 500-01 (2015) (Scalia, J., dissenting). Context is important as “a tool for understanding the terms of the law, not an excuse for rewriting them.” *Id.* at 501.

In addressing section 775.21, we first focus our attention on section 775.21(4), which sets forth who can be designated as a sexual predator. Section 775.21(4)(a) lists enumerated offenses, as well as “violation[s] of . . . similar law[s]” of other jurisdictions that warrant the sexual predator designation. Additionally, section 775.21(4)(d) states that “[a]n offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding under chapter 394” is a sexual predator. In both cases, i.e., offenders who qualify as sexual predators from either their criminal offense or civil commitment, the offender “*shall* be designated as a ‘sexual predator.’” § 775.21(4)(a), (d), Fla. Stat. (emphasis added). The use of the word “shall” makes clear that the Legislature imposed a substantive duty on the court to give the sexual predator designation for these offenders.

Section 775.21(5)(a) then places procedural requirements on the court as a means of carrying out the substantive purpose of the Legislature to impose the sexual predator designation on qualifying offenders. First, section 775.21(5)(a)1. pertains to those offenders who qualify as sexual predators as a result of civil commitment under chapter 394. Next, section 775.21(5)(a)2. refers to offenders

who are before the court for sentencing for the enumerated offenses under section 775.21(4)(a). Stated in full, section 775.21(5)(a)2. provides:

An offender who meets the sexual predator criteria described in paragraph (4)(a) who is before the court for sentencing for a current offense committed on or after October 1, 1993, *is a sexual predator, and the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator*, and the clerk of the court shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order

(Emphasis added.) Lastly, section 775.21(5)(a)3. pertains to offenders who meet the sexual predator designation criteria based on a civil commitment or criminal offense that occurred previously in another jurisdiction and who now maintain permanent, temporary, or transient residence in Florida. In each of the three subsections of section 775.21(5)(a), for those offenders who qualify as sexual predators, the court is obligated to impose the designation and “make a written finding” of the offender’s sexual predator status. § 775.21(5)(a)1.-3., Fla. Stat.

Section 775.21(5)(a)2. addresses offenders at sentencing but does not directly address the category of offenders that are at issue here: offenders who were statutorily mandated to be designated as

sexual predators at sentencing but were not. But we cannot reasonably read the procedural directions under section 775.21(5)(a)2. regarding the timing of the designation in a way that defeats the Legislature's substantive mandate to impose the sexual predator designation.

Section 775.21(5)(a)2. is simply one procedural mechanism designed to implement the Legislature's substantive policy of protecting the public from sexual predators. The Legislature made clear:

The state has a compelling interest in protecting the public from sexual predators and in protecting children from predatory sexual activity, and there is sufficient justification for requiring sexual predators to register and for requiring community and public notification of the presence of sexual predators.

. . . It is the purpose of the Legislature that, upon the court's written finding that an offender is a sexual predator, in order to protect the public, it is necessary that the sexual predator be registered with the department and that members of the community and the public be notified of the sexual predator's presence.

§ 775.21(3)(c)-(d), Fla. Stat. Prohibiting the sexual predator designation because of the sentencing court's failure to act timely under section 775.21(5)(a)2. would directly thwart the Legislature's stated purpose under section 775.21(3). And nothing in the

statutory scheme can be reasonably understood to preclude imposing the statutorily mandated designation when the sentencing court has failed to follow the direction contained in section 775.21(5)(a)2. The statutory scheme provides no basis for concluding that a fumble by the sentencing court should immunize a sexual predator from the legally required designation and registration.

Contrary to the Fifth District's analysis in *McKenzie*, we do not read section 775.21(5)(c) as limiting a court's jurisdiction for offenders under section 775.21(5)(a)2. Section 775.21(5)(c) states:

If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender meets the sexual predator criteria but the court did not make a written finding that the offender is a sexual predator as required in paragraph (a), the Department of Corrections, the department, or the law enforcement agency shall *notify* the state attorney who prosecuted the offense for offenders described in subparagraph (a)1., or the state attorney of the county where the offender establishes or maintains a residence upon first entering the state for offenders described in subparagraph (a)3. The state attorney *shall bring the matter to the court's attention* in order to establish that the offender meets the sexual predator criteria. If the state attorney fails to establish that an offender meets the sexual predator criteria and the court does not make a written finding that an offender is a sexual predator, the offender is not required to register with the department as a sexual predator. The

Department of Corrections, the department, or any other law enforcement agency shall not administratively designate an offender as a sexual predator without a written finding from the court that the offender is a sexual predator.

(Emphasis added.)

We agree with the Third District in *Cuevas*: Section 775.21(5)(c) simply sets forth certain notice requirements for offenders under sections 775.21(5)(a)1. and 775.21(5)(a)3. For these offenders, section 775.21(5)(c) simply places an obligation on the department or another law enforcement agency to “notify” the appropriate state attorney, who in turn must “bring the matter to the court’s attention.” Section 775.21(5)(c) goes on to state that the offender is not obligated to register with the department unless the State brings the matter to the court’s attention and the court then makes a written finding that the offender qualifies as a sexual predator. But nothing in section 775.21(5)(c) places a restriction on the court’s jurisdiction over those offenders who were required to be designated as sexual predators at sentencing but were not. The text contains no such express restriction and the implication of such a restriction is unreasonable given the whole statutory context. This provision of the statute is designed to help ensure

that sexual predators do not escape designation as such. It is not designed to require that a judicial fumble will guarantee that a sexual predator will forever escape designation and the attendant consequences.

We thus reject the view that the absence of a mechanism in subparagraph (c) specifically addressing the type of error presented by this case—a failure to impose the required designation at sentencing—implies that the error is beyond subsequent remedy. An interpretation should not be imposed on the statutory text by implication when that interpretation contradicts the manifest purpose of the text as well as an unequivocal requirement stated in the text.

Lastly, we address the relationship between section 775.21 and the criminal offenses that can give rise to the sexual predator designation. The imposition of sexual predator status under section 775.21 is related to the underlying criminal offense—but is not itself a sentence or punishment. “The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.”

§ 775.21(3)(d), Fla. Stat.; *see also Kelly v. State*, 795 So. 2d 135,

138 (Fla. 5th DCA 2001) (“[T]he sexual predator designation is part of a substantive statutory enactment designed and intended to accomplish . . . policy objectives, [and] the courts have recognized that the designation is neither a sentence nor a punishment.”).

Thus, arguments which contend that a court surrenders jurisdiction over an offender because the offender’s sentence has been completed are flawed. The Legislature merely used the underlying criminal offense as a basis of classification for sexual predators, separate and distinct from a sentence or punishment.

Section 775.21 is plainly applicable to offenders for which this state never had jurisdiction over the original criminal offense. See § 775.21(4)(a), (5)(a)3., Fla. Stat. So it cannot be the case that the jurisdiction of the court to impose the sexual predator designation is tethered to the original court’s jurisdiction regarding imposition of the underlying criminal sentence. Completion of the underlying criminal sentence does not abrogate jurisdiction.

CONCLUSION

We conclude that a circuit court has jurisdiction to impose a sexual predator designation on an offender who qualifies under section 775.21, when the sentencing court did not impose the

designation at sentencing and the offender's sentence has been completed. We therefore quash *McKenzie* and approve *Cuevas*.

It is so ordered.

CANADY, C.J., and MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

COURIEL, J., concurs with an opinion.

POLSTON, J., dissents with an opinion, in which LABARGA and LAWSON, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

COURIEL, J., concurring.

I agree with the majority's conclusion and the reasoning of the Third District in *Cuevas v. State*, 31 So. 3d 290 (Fla. 3d DCA 2010), that section 775.21(5)(c) does not divest a trial court of jurisdiction to designate a person as a sexual predator at any time after conviction of an offense listed in section 775.21(4)(a). That is because, for one thing, "[s]ection 775.21(5)(c) simply sets forth certain notice requirements for offenders . . . [and] places an obligation on the department or another law enforcement agency to 'notify' the appropriate state attorney, who in turn must 'bring the matter to the court's attention.'" Majority op. at 14; *see also Cuevas*, 31 So. 3d at 291-92. I do not see in the plain words of this

provision, or in the part it plays in the structure of the Florida Sexual Predators Act as a whole, a decision by the Legislature to thwart the purpose of the statute expressly stated in section 775.21(3)(d). In that way, today's decision applies the long-settled rule that "[a] textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012).

What is more, the statute does not take from the trial court jurisdiction it would have otherwise had to entertain an effort by the State to seek Brian K. McKenzie's designation as a sexual predator. That designation is, the statute says, "neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes." § 775.21(3)(d), Fla. Stat. (2018). It is not, for example, the imposition of a term of a sentence upon a defendant, *see Advisory Opinion to the Governor re Implementation of Amendment 4, the Voting Restoration Amendment*, 288 So. 3d 1070, 1081-82 (Fla. 2020), so much as it is the trial court's command that certain actions be taken by public officers to comply with the

expressly stated purpose of the Florida Sexual Predators Act.¹ These actions are ministerial duties, neither requiring nor permitting the exercise of discretion by the trial court, the Department of Law Enforcement, or the Department of Corrections.

For this reason, the State might have sought a writ of mandamus from the circuit court requiring the Department of Corrections to designate McKenzie as a sexual predator. Art. V, § 5(b), Fla. Const.; *see also Pleus v. Crist*, 14 So. 3d 941, 945 (Fla. 2009) (To be entitled to mandamus relief, “the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available.” (quoting *Huffman v. State*, 813 So. 2d 10, 11 (Fla. 2000))); Philip J. Padovano, *Florida Civil Practice* § 30:1 (2021 ed.) (“Mandamus is a

1. It stands to reason, therefore, that the statute affords McKenzie no right to contest the designation once the factual predicate for it has been established: it is not a sanction directed at him. We have recently found the absence of such a requirement to be meaningful where, as here, the statute commands as mandatory a certain action by the court in the performance of its duties at sentencing. *Cf. State v. J.A.R.*, 318 So. 3d 1256 (Fla. 2021) (trial court was not required to provide defendant notice and hearing prior to imposing a statutorily required, mandatory fee of \$100 at sentencing).

common law remedy to enforce an established legal right by compelling a public officer or agency to perform a ministerial duty required by law.”).

POLSTON, J., dissenting.

I dissent from the majority’s decision holding that a circuit court has jurisdiction to belatedly impose a sexual predator designation on an offender who qualifies under section 775.21, Florida Statutes (2018), the Florida Sexual Predators Act, when the sentencing court failed to impose the designation at sentencing, and the offender’s sentence has been complete for over three years.

I agree with the reasoning set forth in Judge Shepherd’s dissenting opinion in the Third District Court of Appeal’s decision in *Cuevas v. State*, 31 So. 3d 290 (Fla. 3d DCA 2010), and would conclude that a plain reading of section 775.21(5)(c) does not grant a circuit court authority to designate a sexual predator once the sentence has been completed. Accordingly, I would approve the Fifth District Court of Appeal’s decision in *McKenzie v. State*, 272 So. 3d 808 (Fla. 5th DCA 2019), and disapprove the Third District’s decision in *Cuevas*.

I. BACKGROUND

The Fifth District in *McKenzie* set forth the following facts:

Brian K. McKenzie appeals an order designating him as a sexual predator under section 775.21, Florida Statutes (2018). The order was entered after McKenzie had completed his sentence. We conclude that the trial court lacked jurisdiction to enter the order and, accordingly, reverse. In doing so, we certify conflict with *Cuevas v. State*, 31 So. 3d 290 (Fla. 3d DCA 2010).

On October 28, 2009, McKenzie entered a nolo contendere plea to one count of engaging in sexual activity with a child while in a position of familial or custodial authority, in violation of section 794.011(8)(b), Florida Statutes (2009). Pursuant to a negotiated plea agreement, McKenzie was sentenced to six months' incarceration, followed by two years of sex offender community control, followed by three years of sex offender probation. The trial court further found that McKenzie qualified as a sex offender. Neither party appealed the judgment and sentence.

McKenzie served his jail time and successfully completed his community control and probation. The sentence was completed in April 2015, and McKenzie was notified by the Department of Corrections that he was no longer under supervision.

Three years later, the State filed a notice with the trial court, requesting that McKenzie be designated a sexual predator. After a hearing, and over McKenzie's objection, the trial court entered an order designating McKenzie a sexual predator and ordering him to comply with the registration requirements set forth in section 775.21, Florida Statutes (2018). At the time the trial court entered its order, *Cuevas* was the only Florida appellate court opinion directly addressing the issue of whether a sexual predator designation order may be entered after a defendant has completed his sentence.

The trial court appropriately relied on *Cuevas* in entering its order.

272 So. 3d at 808-09 (footnote omitted).

On appeal, the Fifth District explained that pursuant to the text of section 775.21 and other caselaw interpreting the statute, designating a sexual predator is a mandatory duty intended to take place at sentencing but that a trial court still has jurisdiction to designate a sexual predator while the sentence is being served. *Id.* at 809. The Fifth District then discussed the established rule that a trial court in a criminal proceeding loses subject matter jurisdiction over an offender once the probationary sentence is finished. *Id.* at 810.

Turning to the facts of this case, the Fifth District concluded that McKenzie was an offender who should have been, but was not, designated at the time of sentencing under subparagraph (5)(a)2. but that subsection (5)(c) only expressly mentions subparagraphs (5)(a)1. and (5)(a)3. *Id.* at 810-11. Concluding that Judge Shepherd's dissent in *Cuevas* correctly interpreted the statute based on its plain language, the Fifth District held that section 775.21(5)(c) did not grant the circuit court jurisdiction to belatedly

designate McKenzie as a sexual predator and reversed. *McKenzie*, 272 So. 3d at 811. The Fifth District also certified conflict with *Cuevas*, and this appeal followed. *McKenzie*, 272 So. 3d at 811.

II. ANALYSIS

The majority holds that section 775.21 confers jurisdiction on a trial court to designate a sexual predator after he is sentenced and completes his probation. I disagree because the plain language of section 775.21 does not expressly grant a trial court this authority.

A court's determination of the meaning of a statute begins with the language of the statute. *See Lopez v. Hall*, 233 So. 3d 451, 453 (Fla. 2018) (citing *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). If that language is clear, the statute is given its plain meaning, and the court does "not look behind the statute's plain language for legislative intent or resort to rules of statutory construction." *City of Parker v. State*, 992 So. 2d 171, 176 (Fla. 2008) (quoting *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005)).

The Florida Sexual Predator Act provides for the registration and public notification of sexual predators. *See* § 775.21, Fla. Stat.

(2018). Originally enacted in 1993 and amended in 1996, the Act now sets forth a detailed process for designating sexual predators, which requires a written finding and designation by a trial court. *See Therrien v. State*, 914 So. 2d 942, 946 (Fla. 2005); *see also* ch. 96-388, § 61, Laws of Fla. The Act describes legislative findings and purposes in subsection (3), the criteria for qualifying as a sexual predator in subsection (4), and the process for designating qualifying offenders in subsection (5). *See* § 775.21(3)-(5). A sexual predator designation is neither a sentence nor a punishment. *See* § 775.21(3)(d) (“The designation of a person as a sexual predator is neither a sentence nor a punishment but simply a status resulting from the conviction of certain crimes.”). “Under the 1996 amendment, and continuing up to the present, the duty to register [as a sexual predator] is triggered solely by the trial court’s finding that the offender is a sexual predator.” *Therrien*, 914 So. 2d at 946. And, under subsection (4)(c), an offender is not designated as a sexual predator unless there has been a written finding by a court that the offender meets the sexual predator criteria. § 775.21(4)(c).

An offender may qualify as a sexual predator in three ways. First, and foremost for this case, an offender may qualify by being

convicted of an enumerated current offense. § 775.21(4)(a).

Second, an offender may qualify by committing a comparable offense in another jurisdiction. § 775.21(4)(a)1.a.-b. Third, “[a]n offender who has been determined to be a sexually violent predator pursuant to a civil commitment proceeding” automatically qualifies as a sexual predator under the Act. § 775.21(4)(d).

Most pertinent to the question before this Court, section 775.21(5) details the process by which a qualifying offender may be designated as a sexual predator:

(5) Sexual predator designation.--An offender is designated as a sexual predator as follows:

(a) 1. An offender who meets the sexual predator criteria described in paragraph (4)(d) is a sexual predator, and the court shall make a written finding at the time such offender is determined to be a sexually violent predator under chapter 394 that such person meets the criteria for designation as a sexual predator for purposes of this section. The clerk shall transmit a copy of the order containing the written finding to the department within 48 hours after the entry of the order;

2. An offender who meets the sexual predator criteria described in paragraph (4)(a) who is before the court for sentencing for a current offense committed on or after October 1, 1993, is a sexual predator, and the sentencing court must make a written finding at the time of sentencing that the offender is a sexual predator, and the clerk of the court shall transmit a copy of the order

containing the written finding to the department within 48 hours after the entry of the order; or

3. If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender who establishes or maintains a permanent, temporary, or transient residence in this state meets the sexual predator criteria described in paragraph (4)(a) or paragraph (4)(d) because the offender was civilly committed or committed a similar violation in another jurisdiction on or after October 1, 1993, the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney of the county where the offender establishes or maintains a permanent, temporary, or transient residence of the offender's presence in the community. The state attorney shall file a petition with the criminal division of the circuit court for the purpose of holding a hearing to determine if the offender's criminal record or record of civil commitment from another jurisdiction meets the sexual predator criteria. If the court finds that the offender meets the sexual predator criteria because the offender has violated a similar law or similar laws in another jurisdiction, the court shall make a written finding that the offender is a sexual predator.

When the court makes a written finding that an offender is a sexual predator, the court shall inform the sexual predator of the registration and community and public notification requirements described in this section. Within 48 hours after the court designating an offender as a sexual predator, the clerk of the circuit court shall transmit a copy of the court's written sexual predator finding to the department. If the offender is sentenced to a term of imprisonment or supervision, a copy of the court's written sexual predator finding must be submitted to the Department of Corrections.

. . . .

(c) If the Department of Corrections, the department, or any other law enforcement agency obtains information which indicates that an offender meets the sexual predator criteria but the court did not make a written finding that the offender is a sexual predator as required in paragraph (a), the Department of Corrections, the department, or the law enforcement agency shall notify the state attorney who prosecuted the offense for offenders described in subparagraph (a)1., or the state attorney of the county where the offender establishes or maintains a residence upon first entering the state for offenders described in subparagraph (a)3. The state attorney shall bring the matter to the court's attention in order to establish that the offender meets the sexual predator criteria. If the state attorney fails to establish that an offender meets the sexual predator criteria and the court does not make a written finding that an offender is a sexual predator, the offender is not required to register with the department as a sexual predator. The Department of Corrections, the department, or any other law enforcement agency shall not administratively designate an offender as a sexual predator without a written finding from the court that the offender is a sexual predator.

§ 775.21(5).

Subsection (5)(a) provides separate processes for offenders who have been civilly committed, convicted of a current offense, or convicted in another jurisdiction. See § 775.21(5)(a)1.-3.

Subparagraph (5)(a)2. is the operative subsection for an offender,

like McKenzie, who could have been designated as a sexual predator by the trial court at sentencing.²

The plain language of subparagraph (5)(a)2. only grants a trial court the authority to designate a sexual predator at the time of sentencing. § 775.21(5)(a)2. (providing that an offender who has been convicted of a qualifying offense in subsection (4)(a) “who is before the court for sentencing for a current offense committed on or after October 1, 1993, is a sexual predator” and must be designated as such). Further, it mandates that the trial court imposing the designation “must make a written finding at the time of sentencing that the offender is a sexual predator.” *Id.* These provisions expressly limit a trial court’s authority to designate a sexual predator to the time when the offender is before the court for sentencing, and thus a trial court does not have jurisdiction to designate a sexual predator after he has completed his sentence under this subparagraph.

2. Subparagraph (5)(a)1. applies to offenders who have been civilly committed and (5)(a)3. applies to offenders convicted in an outside jurisdiction, so neither applies in a case where an offender was convicted of a qualifying offense in a Florida court.

Section 775.21(5)(c) is a “recapture” provision that provides for designation of a qualifying offender in the event a court did not make a written finding as required in subsection (a). Specifically, subsection (5)(c) provides that if a law enforcement agency obtains information that an offender meets the criteria as a sexual predator but was not designated at sentencing, the agency shall inform a state attorney who must then bring the matter before a trial court for a written determination. § 775.21(5)(c). By its plain language, this provision applies to those offenders upon whom the trial court was required to, but did not, impose the sexual predator designation at sentencing. But the provision specifies that an agency is required to notify the state attorney who prosecuted the offense for offenders described in subparagraph (a)1. and subparagraph (a)3., neither of which is applicable to this case. Subsection (5)(c) fails to reference subsection (5)(a)2.—the subsection applicable to McKenzie. *See Cuevas*, 31 So. 3d at 294 (Shepherd, J., dissenting) (“However, [section 775.21(5)(c)] . . . is inapplicable on its face because subparagraph (a)1 pertains only to offenders who have been civilly committed under the Jimmy Ryce Act, § 394.910, Fla. Stat. (2000), and subparagraph (a)3 pertains to

persons who have committed a similar violation in another jurisdiction. By its terms, this subsection does not include offenders described in section 775.21(a)2, the category in which Cuevas falls.”). Accordingly, the plain language of section 775.21(5) does not expressly grant a trial court this authority.

The majority attempts to circumvent the plain language of section 775.21(5)(c) by reading something into section 775.21 that is not there. The majority focuses on the Legislature’s use of the language “shall” in section 775.21(4), *see* majority op. at 10, but ignores the remaining language included in that directive that it “shall” be designated *under subsection (5)*, which still subjects the designation to the processes and restrictions set forth in subsection (5). Under subsection (5)(a)2., the designation occurs by a written finding at the time of sentencing. The majority concludes that this subsection does not apply to the category of offenders at issue in this case, and “[t]he statutory scheme provides no basis for concluding that a fumble by the sentencing court should immunize a sexual predator from the legally required designation and registration.” *See* majority op. at 12-13. However, the Legislature expressly contemplated a “fumble” by the sentencing court and the

parties when it included a recapture provision in subsection 5(c), which, by its plain language, does not apply to this case. As urged by the State, the majority concludes that subsection 5(c) simply sets forth certain notice requirements. *See* majority op. at 14. However, this Court has previously explained that subsection (5) is a “second chance” provision “applicable to persons who could have been but were not declared sexual predators at sentencing.” *See Therrien*, 914 So. 2d at 947. And the plain language of subsection (5)(c) and its express limitations simply do not allow the State to impose McKenzie’s sexual predator designation three years after his sentence was completed.

III. CONCLUSION

I would approve the Fifth District’s decision in *McKenzie*, disapprove the Third District’s decision in *Cuevas*, and conclude that a plain reading of section 775.21 does not grant a circuit court authority to designate sexual predators once they have completed their sentence.

I respectfully dissent.

LABARGA and LAWSON, JJ., concur.

Application for Review of the Decision of the District Court of Appeal

Certified Direct Conflict of Decisions

Fifth District - Case No. 5D18-2206

(Orange County)

Ashley Moody, Attorney General, Amit Agarwal, Solicitor General,
and Jeffrey Paul DeSousa, Deputy Solicitor General, Tallahassee,
Florida, and Wesley Heidt, Bureau Chief, Daytona Beach, Florida,

for Petitioner

Terrence E. Kehoe of Law Office of Terrence E. Kehoe, Orlando,
Florida,

for Respondent

Applicant Details

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 Middle Initial **M**
 Last Name **Berland**
 Citizenship Status **U. S. Citizen**
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http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=54704&yr=2009
 Date of JD/LLB **May 13, 2022**
 Class Rank **20%**
 Law Review/Journal **Yes**
 Journal(s) **Washington & Lee Journal of Civil Rights and Social Justice**
 Moot Court Experience **Yes**
 Moot Court Name(s) **John Davis Appellate Advocacy Competition | ABA National Appellate Advocacy Competition | D.C. Region**

Bar Admission

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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May 30, 2021

The Honorable Elizabeth W. Hanes
U.S. Court House
701 East Broad Street
Richmond, VA 23219

Dear Judge Hanes:

I am a rising third-year law student at Washington and Lee University School of Law and am applying for a judicial clerkship in your chambers for the 2022-2024 term. After graduating law school, I hope to clerk in federal chambers because it will expose me to a wide variety of legal practices while improving my research and writing abilities. This upcoming school year I will extern for Judge Connelly of the United States Bankruptcy Court for the Western District of Virginia. I believe that spending a school year in federal court will give me the skills necessary to be a successful law clerk. Working in your chambers is especially appealing because I am planning on staying in Virginia when I graduate law school.

I am confident that my legal research and writing abilities would make me a strong addition to your chambers. This past school year, I competed in Washington & Lee Law's John W. Davis Moot Court Competition. The brief that my teammate and I wrote won the finalist designation for scoring in the top four. Based on this performance, the Moot Court Board selected me to be the brief writer for our school's external team. We competed in the D.C. regional ABA National Appellate Advocacy Competition and the brief that I wrote won best brief in a field of 36 teams. These two moot court competitions highlight my ability to work on a close-knit team, research sophisticated legal issues, and write at a high level.

The two internships I had last summer taught me how to quickly become proficient in new areas of law. At Boyd & Sipe, a boutique commercial real estate and land use law firm, I wrote memoranda that analyzed the viability of tort claims against an HOA, assessed causes of action to support an injunction against the development of a commercial vineyard, and wrote the response to a motion to dismiss in a case challenging the legality of a special use permit. At the Middlesex District Attorney's Office in Massachusetts, I worked on a team which handles white collar and trafficking crimes. I wrote memoranda on whether a stolen client list fell within the scope of a larceny statute and the viability of venue challenges in money laundering and embezzlement cases. I also prepared a counter motion to dismiss and a counter motion to suppress evidence. Writing motions and memoranda on a wide variety of subjects furthered my writing abilities and taught me how to teach myself new areas of law.

I would welcome the opportunity to speak with you to discuss how I might contribute to your chambers as a law clerk. I am enclosing a copy of my resume, law school transcript, undergraduate transcript, and writing sample, and my university will be forwarding three letters of recommendation. Thank you for your time and consideration of my application and I look forward to hearing from you soon.

Sincerely,
Joshua Berland

Joshua Berland

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Email: Berland.j22@law.wlu.edu / Phone: (617) 448-6138

EDUCATION

Washington and Lee University School of Law, Lexington, VA

Juris Doctor Candidate, May 2022

GPA: 3.731 (Top 20%)

- Lead Articles Editor, Washington & Lee Journal of Civil Rights and Social Justice
- Best Brief, National Appellate Advocacy Competition | D.C. Region
 - Selected by the Moot Court Board to be the brief writer for Washington and Lee Law's external moot court team.
- Brief Finalist, Washington & Lee Law's John W. Davis Moot Court Competition
- President, Jewish Law Student Association

Trinity College, Hartford, CT

B.A., Political Science, *cum laude*, May 2018

- Honors in Major: Honors Thesis, "Nativism in the Former Warsaw Pact Countries"

Council of International Educational Exchange, Amman, Jordan

Study Abroad, Fall 2016

- Volunteered for the U.S. Embassy's Education USA program; assisted refugees and Jordanian students with their applications to American universities.

EXPERIENCE

U.S. Bankruptcy Court for the Western District of Virginia, Harrisonburg, VA

August 2021–April 2022

Incoming Judicial Extern for the Honorable Rebecca Connelly

Financial Industry Regulatory Authority (FINRA), D.C.

May–August 2021

Enforcement Division Extern

- Wrote settlement proposals to respondents accused of violating FINRA rules.
- Drafted memoranda on the legality of fintech companies paying influencers for client referrals.
- Wrote sanction analysis determining what penalty was appropriate in cases where firms and individuals violated FINRA rules.
- Reviewed and summarized correspondence from the CEO of a REIT fund in an investigation determining whether asset valuations were materially false.

Boyd & Sipe PLC, Charlottesville, VA

September–November 2020

Legal Intern

May–June 2020

- Wrote the response to a motion to dismiss in a case addressing the validity of a special use permit.
- Researched and wrote memoranda on issues pertaining to land use, zoning, and local government.
- Researched the legality of zoning ordinances preventing a vacation home rental business from operating.
- Wrote memorandum supporting an injunction to prevent the development of a commercial vineyard.
- Researched and briefed potential issues on behalf of townships re-codifying local ordinances.

Middlesex District Attorney, Woburn, MA

June–August 2020

SIU Legal Intern (White Collar & Trafficking Unit)

- Drafted memoranda to assist prosecutors in money laundering, trade secret, and embezzlement cases.
- Wrote motions to dismiss and to suppress evidence.
- Researched venue and jurisdictional issues on out of district suspects committing crimes within the district.

Citizens Financial Group, Middletown, CT

July 2018–July 2019

Licensed Relationship Banker

- Advised middle market and high net worth clients on banking, lending, and investment services.
- Served as the primary liaison between retail branches and the Private Wealth Team.
- Attained Series 6 and 63 licenses as well as a Life and Health Insurance license.

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Current Status: On Campus

Date Produced: 05/20/2021

Class: 2022

Other Ed: BA TRINITY COLLEGE

	COURSE	ATT	COM	GRADE	POINTS
LAW-FALL SEMESTER 2019-20					
LAW 109	CIVIL PROCEDURE	4.0	4.0	B+	13.32
LAW 140	CONTRACTS	4.0	4.0	B+	13.32
LAW 163	LEGAL RESEARCH	0.5	0.5	B+	1.67
LAW 165	LEGAL WRITING I	2.0	2.0	B+	6.66
LAW 190	TORTS	4.0	4.0	A	16.00
Term	Cmpl Cr:	14.5	GPA Pts:	50.97	GPA Cr: 14.5 GPA: 3.515
Cumul	Cmpl Cr:	14.5	GPA Pts:	50.97	GPA Cr: 14.5 GPA: 3.515

	COURSE	ATT	COM	GRADE	POINTS
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***** END OF TRANSCRIPT *****

	COURSE	ATT	COM	GRADE	POINTS
LAW-FALL SEMESTER 2021-22 CURRENT OR FUTURE REGISTRATION					
LAW 534	JUDICIAL EXTERNSHIP - FEDERAL				2.0
LAW 534F	JUDICIAL EXTERN: FED-FD.PLCMT				2.0

The COVID-19 pandemic required significant academic changes.
 Unusual enrollment patterns and grading reflect the disruption
 of the time, not necessarily the student's work.

	COURSE	ATT	COM	GRADE	POINTS
LAW-SPRING SEMESTER 2019-20					
LAW 130	CONSTITUTIONAL LAW	4.0	4.0	CR	0.00
LAW 150	CRIMINAL LAW	3.0	3.0	CR	0.00
LAW 163	LEGAL RESEARCH	0.5	0.5	CR	0.00
LAW 166	LEGAL WRITING II	2.0	2.0	CR	0.00
LAW 179	PROPERTY	4.0	4.0	CR	0.00
LAW 195	TRANSNATIONAL LAW	3.0	3.0	CR	0.00
Term	Cmpl Cr:	16.5	GPA Pts:	0.00	GPA Cr: 0.0 GPA: 0.000
Year	Cmpl Cr:	31.0	GPA Pts:	50.97	GPA Cr: 14.5 GPA: 3.515
Cumul	Cmpl Cr:	31.0	GPA Pts:	50.97	GPA Cr: 14.5 GPA: 3.515

	COURSE	ATT	COM	GRADE	POINTS
LAW-FALL SEMESTER 2020-21					
LAW 285	EVIDENCE	3.0	3.0	A	12.00
LAW 298P	GOVERNMENT CONTRACTS NEG PRAC	3.0	3.0	A-	11.01
LAW 301	FOURTH AMENDMENT AND TECH SEM	2.0	2.0	A-	7.34
LAW 413	SALES	3.0	3.0	A-	11.01
LAW 446P	VETERANS LAW PRACTICUM	4.0	4.0	A-	14.68
Term	Cmpl Cr:	15.0	GPA Pts:	56.04	GPA Cr: 15.0 GPA: 3.736
Cumul	Cmpl Cr:	46.0	GPA Pts:	107.01	GPA Cr: 29.5 GPA: 3.627

	COURSE	ATT	COM	GRADE	POINTS
LAW-SPRING SEMESTER 2020-21					
LAW 210	BANKRUPTCY	3.0	3.0	A-	11.01
LAW 216	BUSINESS ASSOCIATIONS	4.0	4.0	A	16.00
LAW 385P	NEGOTIATION/CONFLICT RES PRAC	2.0	2.0	A	8.00
LAW 390	PROFESSIONAL RESPONSIBILITY	3.0	3.0	A	12.00
LAW 428P	TRIAL ADVOCACY PRACTICUM	3.0	3.0	A	12.00
LAW 518	INTER-SCHOOL MOOT COURT COMP	1.0	1.0	CR	0.00
Term	Cmpl Cr:	16.0	GPA Pts:	59.01	GPA Cr: 15.0 GPA: 3.934
Year	Cmpl Cr:	31.0	GPA Pts:	115.05	GPA Cr: 30.0 GPA: 3.835
Cumul	Cmpl Cr:	62.0	GPA Pts:	166.02	GPA Cr: 44.5 GPA: 3.731

(continued in next column)

Registrar

PAGE 1 of 1